Office - Supreme Court, U.S.
FILED
APR 5 1985
ALEXANDER L. STEVAS
CLERK

No. 84-732

In the Supreme Court of the United States

OCTOBER TERM, 1984

THEODORE CLEAVINGER, MARVIN MARCADIS, AND TOM P. LOCKETT, PETITIONERS

v.

DAVID SAXNER AND ALFRED CAIN, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

G. FLINT TAYLOR
CHARLES W. HOFFMAN
343 South Dearborn Street
Suite 1607
Chicago, Illinois 60604
(312) 663-5046
Counsel for Respondents

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Petitioners

PETITION FOR WRIT OF CERTIORARI FILED NOVEMBER 5, 1984
CERTIORARI GRANTED FEBRUARY 19, 1985

TABLE OF CONTENTS*

	Page
Docket Entries	1
Third Amended Complaint (filed Sept. 27, 1978)	12
District Court Order (filed Apr. 24, 1981)	23
Policy Statement 7400.5C on Inmate Discipline (Oct. 4, 1974) (PX 7)	25
Incident Report for David Saxner (PX 5)	50
Incident Report for Alfred Cain, Jr. (PX 12)	52
Inmate Rights at Institution Discipline Committee Committee Hearing 7400.5C-TH (Oct. 4, 1974) (PX 6)	54
Institution Discipline Committee Report for David Saxner (DX 10)	56
Institution Discipline Committee Report for Alfred Cain, Jr. (PX 13)	64
Request for Administrative Remedy for David Saxner (PX 10)	68
Request for Administrative Remedy for Alfred Cain, Jr. (PX 15)	75
Regional Appeal for David Saxner (PX 11)	79
Regional Appeal for Alfred Cain, Jr. (PX 16)	80
Prisoners at Terre Haute Seek an Investigation (Press Release Prepared by David Saxner) (PX 1)	81
Interview Notes of David Saxner (PX 3)	85
Letter, David Saxner to Arpiar Saunders, Attorney (Jan. 9, 1974) (PX 4)	91
Memorandum, Prisoner's Peoples Union/Inmates of Terre Haute Prison to U.S. Federal Bureau of Prisons (May 13, 1973) (PX 14)	93

*The opinion of the court of appeals as well as an excerpt from the Code of Federal Regulations of the regulations now applicable to Inmate Discipline are printed in the appendix to the petition for writ of certiorari and have not been reproduced.

Policy Statement 7300.2C on Prisoner's Mail Box (Aug. 20, 1974) (PX 2) 97
Order Granting Certiorari 102

RELEVANT DOCKET ENTRIES

DAVID SAXNER AND ALFRED CAIN, JR., PLAINTIFFS,

v.

CHARLES BENSON, ET AL., DEFENDANTS

PETITION FOR WRIT OF HABEAS CORPUS

3/7/75	Petitioners files [sic] petition for writ of habeas corpus.
3/21/75	Summons issued.
4/4/75	U.S. Marshal makes return on Summons, $6.00.
12/15/75	Respondent files motion to dismiss, with memorandum in support of said motion, c/s.
12/19/75	Plaintiffs file amended complaint. Plaintiffs request trial by jury.
12/19/75	Case called. Government requests extension of time to respond to amended complaint filed this date. Court Grants 60 days. Case continued from this calendar.
1/5/76	Summons issued.
2/10/76	U.S. Marshal makes return on summons and complaint, $32.92.
3/17/76	Defendants file motion to dismiss and memorandum in support of said motion, c/s.
5/13/76	Charles Hoffman and Michael E. Deutsch file appearance for plaintiffs. Plaintiffs, by counsel, file motion for leave to amend complaint and plaintiff's [sic] response to defendants motion to dismiss, c/s.
8/1/77	Set for pre-trail Tuesday, Aug. 23, 1977 at 2:30 P.M. (SHD)
8/23/77	Defendants, by counsel, file motion for continuance of pre-trial conference, c/s. Same GRANTED and continued to Sept. 13, 1977, U.S. Courthouse, Rm. 232, at 11:30 A.M., Indpls., Ind.
10/25/77	Set for pre-trail Nov. 17, 1977 at 9:30 A.M. (CJH)

10/27/77 This cause came before the Court on plaintiffs' civil complaint, defendants' motion to dismiss, plaintiffs' amended complaint, defendants' second motion to dismiss, plaintiffs' response to defendants' motion and motion for leave to file a second amended complaint. Court having considered said motions, now GRANTS defendants' motion in part and DENIES motion in part. The Amended Complaint is deemed filed as leave to file is not required since responsive pleading has yet been filed. The defendants' motion to dismiss for want of subject matter is GRANTED as to all grounds save those arising under 28 USC 1331 as to which it is DENIED. The motion to dismiss the claim for the expunction of the records of the incident at suite [sic] is GRANTED. The motion to dismiss claims against defendants Levi, Carlson and Henderson is GRANTED and the motion to dismiss claims against defendant Benson is DENIED.

12/2/77 Set for pre-trial Dec. 20, 1977 at 11:00 A.M. (CJH)

12/12/77 Plaintiffs file motion for production of documentary records, c/s. Respondent, by counsel, files motion to strike plaintiffs' request for production, c/s.

12/13/77 Respondent files motion for enlargement of time, c/s.

12/19/77 Plaintiffs file motion for continuance of pre-trial conference, c/s. Motion GRANTED and action is removed from pre-trial calendar and trial calendar for Jan. Term, 1978.

3/20/78 Henry E. Davis Special litigation Section, Criminal Division, U.S. Dept. of Justice enters appearance for all defendants and the appearance of Glenda G. Gordon as counsel for defendants shall be withdrawn. c/s.

8/3/78 Set for pre-trial August 25, 1978 at 10:30 A.M. (SHD)

8/18/78 Defendant, by counsel, files motion for continuance of pre-trial conference, c/s.

8/21/78 Defendant's motion for continuance of pre-trial Granted.

8/23/78 Pre-trial conference reset for Sept. 5, 1978 at 2:30 P.M. in Indianapolis, In.

9/13/78 Cause set for Jury Trial on Oct. 9, 1978, at 9:00 A.M. (SHD)

9/19/78 Defendant files proposed witness and exhibit lists.

9/5/78 Defendant's [sic] motion to strike Granted in part and Denied in part.

9/18/78 This matter came before the Court on plaintiffs' motion for production and defendants' motion to strike. Court having considered same, Defendants are directed to produce for plaintiffs each of the non-exempt portions of their central Inmate Files and the report of the Surgeon General's inspection of the T. H. Penitentiary Hospital. Further, if the Bureau of Prisons conducted an investigation into the death of T.H. Inmate Wm. Lowe and if the matter of said death is not in litigation, a copy of the findings of the investigation are to be produced for the use of the plaintiffs. All other requests made in plaintiff's motion are Denied. Defendant's motion to strike is sustained as indicated.

9/20/78 Approved pre-trial entry entered.

9/27/78 Plaintiffs file third amended complaint.

9/28/78 Defendants file answer to third amended complaint, 1st, 2nd, 3rd, 4th, 5th, and 6th defense, with memorandum in support of attachments thereto, c/s, with motion for judgment on the pleadings.

10/4/78 Trial date for this cause heretofore assigned for Oct. 9, 1978, is hereby VACATED.

11/3/78 Cause set for pre-trial on Nov. 27, 1978 at 9:30 A.M. (CJH)

12/1/78 Cause set for pre-trial on Dec. 18, 1978 at 4:00 P.M. (CJH)

12/15/78 Plaintiffs file motion for continuance of the pre-trial and to be removed from the current calendar. Patricia Handlin files appearance for plaintiffs, c/s. Court GRANTS motion for continuance from pre-trial and trial calendar

12/18/78 Plaintiffs file notice of taking of depositions of defendants Lockett, Marcades, [sic] Cleavinger, G.D. Wilson and Benson, and motion to take depositions by tape recorders, with affidavit thereto, c/s.

12/19/78 Jeffrey H. Haas files motion to withdraw as counsel of record for plaintiffs herein, c/s. Said motion APPROVED and said appearance is hereby withdrawn accordingly.

12/18/78 Plaintiffs, by counsel, file motion for continuance of the date set for filing of a response to the defendants' motion for a judgment on the pleading from Dec. 22, 1978 until the first week in January, 1979 with affidavit attached thereto, c/s.

12/19/78 Plaintiffs' motion for a continuance of date set for filing of a response to the defendants motion for a judgment on the pleadings from Dec. 22, 1978 until 1st week of January, 1979 (1/5/79) is GRANTED. This action in no-way affects any trial date that may have been set in this matter by the trial court.

1/4/79 Plaintiffs motion to take depositions by tape recorder GRANTED.

1/10/79 Plaintiffs file response to defendants motion for judgment on the pleadings, with memorandum in support of said motion and exhibit A attached thereto and response to defendants' motion to dismiss for failure to comply with an order of the Court, c/s.

1/26/79 Defendants file motion for protective order and response to motion for sanctions for failure to produce documents, c/s. Plaintiffs file first witness list and motion to compel production of defendants for deposition and for sanctions for failure to produce documents, c/s.

1/29/79 Plaintiffs file motion to substitute, c/s. Plaintiffs file response to defendants' motion for judgment on the pleadings, with memorandum in support of said response and exhibit A attached thereto, c/s. Plaintiffs file response to defendants' motion to dismiss for failure to comply with an order of this Court, c/s.

2/7/79 This cause came before the Court on plaintiffs' motion to substitute, Court having considered same, IT IS ORDERED that said motion is Granted and the corrected "Response to Defendants' Motion to Dismiss for Failure to Comply with an Order of this Court", plaintiffs' "Response to the Defendants' Motion for Judgment on the Pleadings", and plaintiffs' memorandum in support thereof, is hereby filed NUNC PRO TUNC, as of the date of the original pleadings were filed with the Court.

2/8/79 This cause came before the Court on plaintiffs' motion to compel production of defendants for deposition and for sanctions for failure to produce documents and defendants' motion for a protective order and response to motion for sanctions. Court having considered same; Defendants' motion for protective order is DENIED. Plaintiffs may notice any defendant for deposition at his city of usual residence on reasonable notice. Counsel are urged to cooperate in the scheduling of said depositions. Counsel may apply to the Court for relief in case of oppressive conduct. Plaintiffs' motion for sanctions is STAYED. Counsel for plaintiffs shall submit a request for the documents at issue with as much particularity as possible. Defendants shall reply stating whether such document exist and if they exist, why they are outside this Court's Entry of Sept. 18, 1978. Counsel for defendants shall submit such documents claimed to be outside this Court's Order to the Magistrate for in

camera inspection. The motion for attorney's fees and costs is DENIED.

2/27/79 Plaintiffs file notice to take depositions of defendants Marcadis, Wilson and Cleavinger, c/s.

3/5/79 Cause set for pre-trial on March 19, 1979 at 9:30 A.M. (JEN)

3/19/79 Deposition of defendant Marcades [sic] on March 3, 1979 consisting of 4 tapes, 7 sides, filed.

4/2/79 Defendants file summarized theories of the defense, counts 1 thru 12, c/s.

4/4/79 Plaintiffs file settlement demand and motion for leave to file amendments to complaint, c/s. Copy forwarded to U.S. Attorney.

4/9/79 Plaintiffs file motion for leave to file substituted amendment. Same forwarded to Magistrate Godich and copy forwarded to U.S. Attorney.

4/16/79 Defendants file supplemental authority on behalf of the defendants for consideration by the Court in connection with the defendants pending motion for judgment on the pleadings, with copy of opinion attached thereto, c/s.

4/25/79 Defendants file answer and supporting memorandum, c.s,

5/4/79 Defendants, by counsel, file witness and exhibit lists, c/s.

5/14/79 Plaintiffs file final witness list, c/s., and discovery request.

5/18/79 Defendants, by counsel, file first set of interrogatories to plaintiffs.

5/22/79 Approved pre-trial entry entered.

7/27/79 Cause set for pre-trial on August 29, 1979 at 2:15 P.M. (SHD)

8/3/79 This cause came before the Court on defendants' motion for judgment on the pleadings and plaintiffs' response thereto. Court having considered same, now Grants the motion in part and denies the motion in part. Accordingly, Court DISMISSES Count two and enters Judgment for defendants on counts One, Three, Five, Seven, Nine and Twelve. The action will go forward as to Benson Only on Count Four, as to Wilson only on Count Six, as to Benson Only on count eight, as to Wilson and Benson on Count Ten, and as to Benson Only on Count Eleven. The motion for leave to amend to sue defendants in their official capacities is denied, and the motion for leave to amend to claim punitive damages is Granted, as such leave should be freely granted.

8/27/79 Plaintiffs file motion for continuance of pre-trial conference and for removal of cause from the Oct. term trial calendar. Motion Granted as to pre-trial conference only and said pre-trial conference is continued. Plaintiffs file motion for leave to file motion for reconsideration and Court's Order dated Aug. 3, 1979.

8/30/79 Plaintiff's motion for continuance of trial date GRANTED.

8/31/79 Defendants file response to plaintiffs' motion for reconsideration of Court Order dated Aug. 3, 1979, c/s.

9/4/79 Plaintiffs' motion for reconsideration of Court Order dated August 3, 1979, or alternatively for certification for immediate appeal is DENIED in its entirety. Case is reassigned to the October 1979, trial calendar.

10/4/79 Plaintiffs file motion for continuance, with affidavit thereto, c/s. Motion GRANTED and said cause is continued from the Oct. 1979 trial calendar. Plaintiffs' counsel's attention is directed to Local Rule 6(c).

2/20/80 Cause set for pre-trial conference on February 28, 1980, at 9:00 A.M., T.H. (GEB)

5/6/80 Cause set for final pre-trial conference on June 2, 1980, at 9:00 A.M. Terre Haute.

6/2/80 Robert Kendall, JR., Gen. Lit. & Legal Advice Sect. Criminal Div., Dept. of Justice, Washington, D.C., 20530, files substitution of counsel for defendants, c/s.

9/3/80 Cause set for trial on Dec. 3, 1980, at 9:30 a.m., T.H.

12/1/80 Plaintiffs, by counsel, file motion for continuance of trial date, c/s.

12/9/80 Cause set for trial March 12, 1981 at 9:00 A.M. (GEB)

1/22/81 Cause set for pre-trial conference on Jan. 29, 1981 at 2:00 P.M. (GEB)

1/27/81 Pre-trial conference set for Jan. 29, 1981, at 2:00 P.M. continued.

3/12/81 The trial of said cause previously scheduled for March 12, 1981, is VACATED and same RESCHEDULED for trial on April 23, 1981, T.H.

4/7/81 Pltfs file motion for reconsideration of dismissal of defts Marcadis, Cleavenger [sic] and Lockett, with attachments thereto, c/s.

4/23/81 Defts file instructions Nos. 1 thru 40 and trial brief, c/s. same forwarded to E.V.

4/23/81 Comes now the parties herein and by their respective counsel and trial commenced. Voir dire examination commenced and completed. Opening statement of counsel heard. Evidence on behalf of pltfs commenced. At 5:10 P.M. pltfs orally move for separation of witness. Defts do not object. Motion Granted. Evidence on behalf of pltf resumed and continued. Court adjourned until April 24, 1981, at 9:00 A.M.

4/24/81 This matter came before the Court on pltfs' motion for reconsideration of dismissal of defts Marcadis, Cleavenger [sic] and Lockett. Parties have supplied the Court with Authority for their respective positions and Court having considered same, IT IS ORDERED that defts Marcadis, Cleavenger [sic] and Lockett be brought back into this litigation and pltfs' motion for reconsideration is GRANTED. The said defts will still be able to assert qualified good faith immunity as a defense.

4/24/81 Trial resumed. Evidence on behalf of pltfs is resumed and concluded. Pltfs rest. Outside the presence of the jury, defts move for directed verdict. Jury recalled. Evidence on behalf of defts commenced and concluded. Defts rest. Court adjourned until Monday, April 27, 1981, at 1:00 P.M. **Court Grants as to Deft Wilson in Count 6 and Grants as to Benson in Count 10. Court denies as to rest of defts and counts.

4/27/81 Trial resumed. Final arguments of counsel are heard. Instructions read to jury and jury retires to deliberate their verdict. Jury returns with verdicts as follows:

For deft Benson and against both pltfs.

For deft Wilson and against pltf Cain.

For both pltfs and against deft Cleavenger [sic] and assess compensatory damages in the sum of $1,500.00 and punitive and exemplary damages, none.

For both pltfs and against deft Marcadis and assess compensatory damages in the sum of $1,500.00 and punitive and exemplary damages, none.

For both pltfs and against deft Lockett and assess compensatory damages in the sum of $1,500.00 and punitive and exemplary damages, none.

Court Adjourned. S.E. O.B.Vol. 16, P. 2

4/28/81 Judgment entered in accordance with nine Jury Verdicts, S.E. O.B. Vol. 16, P. 3 (Entered 4/30/82) (case closed)

5/6/81 Entry heretofore entered on April 24, 1981, hereby corrected to-wit:

Trial resumed. Pltfs evidence resumed and concluded. Pltfs rest.

Outside the presence of the Jury, defts move for a directed verdict.

Court having reviewed the evidence, GRANTS motion of deft Wilson for directed verdict on Count 6 and GRANTS motion of deft Benson for directed verdict on Count 10. Jury re-

called. Defts evidence commenced and concluded. Defts rest. Court adjourned until Monday, April 27, 1981, at 1:00 P.M.

5/7/81 Defts file motion for judgment notwithstanding the verdict or in the alternative motion for a new trial, with memorandum of law in support of said motion, c/s. Same forwarded to E.V.

5/27/81 Pltfs file motion for atty fees and costs, affidavit of Atty Taylor, affidavit of Atty Handlin and bill of costs, c/s. Same forwarded to E.V.

6/3/81 Pltfs file response to defts' motion for judgment notwithstanding the verdict or alternatively, for a new trial, c/s. Same forwarded to E.V.

6/16/81 Defts, by counsel, file opposition to pltfs' motion for atty fees and costs, c/s. Same forwarded to E.V.

7/14/81 Hearing on motion for pltf's atty fees and deft's motion for amendment of judgment or, in the alternative, new trial. Arguments of counsel are heard. Court will rule on matter.

10/20/81 Pltfs file supplemental and amended motion for fees and costs, with exhibit A attached thereto, c/s. Same forwarded to E.V.

4/14/82 This matter came before the Court upon the motion of defts Marcadis Lockett and Cleavenger [sic] for a judgment notwithstanding the verdict or in the alternative, a motion for a new trial pursuant to Rules 50 and 59, F.R.C.P. Ct. having considered same, IT IS ORDERED that defts' motion for judgment notwithstanding the verdict is DENIED and defts' alternative motion for a new trial is DENIED. This matter also came before the Court upon pltfs' motion for attys fees and costs filed May 27, 1981, and its supplemental and amended motion for fees and costs filed Oct. 20, 1981; defts filed their opposition to any fees awards on June 16, 1981, and a hearing on said matters was held July 14, 1981. Ct. having considered same, IT IS ORDERED that pltfs' requests for atty fees are DENIED. S.E. O.B. Vol. 18, p. 78

5/13/82 Defendants file Notice of Appeal. Copy of NOTICE OF APPEAL, Information Sheet and Docket Entries forwarded to U.S. Court of Appeals, Chicago, Illinois. Copy of information sheet and Docket Entries forwarded to U.S. Attorney. Copy of Notice of Appeal, information sheet and docket entries forwarded to Court Reporter, Marjorie D. Cirrincone.

5/18/82 Plaintiffs file Notice of Cross Appeal, c/s. Filing fee paid. Copy of Notice of Cross-Appeal, Information Sheet and Docket Entries forwarded to U.S. Court of Appeals, Chicago, Illinois. Copy of same forwarded to U.S. Attorney and Robert Kendall, Jr.

5/25/82 Transcript on appeal consisting of 2 Volumes of pleadings forwarded to U.S. Court of Appeals, Chicago, Illinois.

5/28/82 Rec'd from Clerk, U.S. Court of Appeals, Court Order: The Court, *sua sponte* Orders as follows:

1. Appeals consolidated for purposes of briefing and oral argument.
2. Defts-appellants cross-appellees' opening brief and appendix shall be filed on or before July 5, 1982.
3. Pltfs-Appellees cross-appellants shall file combined responsive brief on the main appeal and opening brief and appendix on the cross-appeal on or before Aug. 4, 1982.
4. Deft-Appellants cross-appellees' reply brief, if any, and responsive brief and appendix on the cross-appeal, shall be filed on or before Sept. 3, 1982.
5. Pltfs-Appellees cross-appellants' reply brief, if any, on the cross-appeal shall be filed on or before Sept. 17, 1982.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

No. TH 75-47-C

DAVID SAXNER AND ALFRED CAIN, JR. PLAINTIFFS,

v.

CHARLES BENSON, T. CLEAVENGER[sic], M. MARCADIS, L. P. LOCKETT, AND G. D. WILSON, DEFENDANTS

THIRD AMENDED COMPLAINT*

I. INTRODUCTION

1. Plaintiffs seek declaratory, injunctive, and monetary relief, challenging the illegal confinement in segregation units and other illegal punishments imposed upon them at the United States Penitentiary at Terre Haute, Indiana, by the defendants.

II. JURISDICTION

2. The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1331. This is an action to redress the deprivation of rights, privileges, and immunities secured by the First, Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution. The amount in controversy for each plaintiff, exclusive of interest and costs, exceeds $10,000.

III. PARTIES

3. Plaintiff David Saxner is a citizen of Chicago, Illinois. He was incarcerated in the U.S. Penitentiary at Terre Haute, Indiana, from August 18, 1973, to April 25, 1975. He is a citizen of the United States.

4. Plaintiff Alfred Cain, Jr. is currently a citizen of New York, New York. He was incarcerated in the U.S. Penitentiary at Terre Haute, Indiana, from January 2, 1973, to December 12, 1975. He is a citizen of the United States.

*As amended at pre-trial conference held on November 18, 1977, in Terre Haute, Indiana.

5. Defendant Charles Benson was at all times pertinent the Warden of the U.S. Penitentiary at Terre Haute, Indiana, and was charged with the responsibility of administering that penitentiary.

6. Defendant T. Cleavenger was at times relevant to this complaint Associate Warden at the U.S. Penitentiary at Terre haute, Indiana, and served as chairman of the Institutional Disciplinary Committee (hereafter I.D.C.). The I.D.C. is charged with the responsibility of passing judgment on disciplinary charges which are lodged against prisoners at the U.S. Penitentiary at Terre Haute, Indiana, by staff members at that institution.

7. Defendant M. Marcadis was at times relevant to this complaint Lieutenant at the U.S. Penitentiary at Terre Haute, Indiana, and a member of the I.D.C. at that institution.

8. Defendant L. P. Lockett was at times relevant to this complaint chief of Classification and Parole at the U.S. penitentiary at Terre haute, Indiana, and a member of the I.D.C. at that institution.

9. Defendant G. D. Wilson was at times relevant to this complaint an Administrative Supervisor at the U.S. Penitentiary at Terre Haute, Indiana.

10. All defendants are sued in their individual capacities.

IV. COUNT ONE

11. Plaintiffs reallege paragraphs 1–10 as if fully set forth herein.

12. On February 21, 1975, Plaintiff Saxner was found guilty by the I.D.C. of charges of encouraging others to refuse to work, possession of contraband, and misuse of mails. As a result of these charges, Plaintiff Saxner was placed in administrative detention from February 14, 1975, until February 21, 1975, and in disciplinary segregation from February 21, 1975, until March 21, 1975, and eighty four days of good time was taken from him.

13. The charge of misuse of mails against Plaintiff Saxner arose from his distribution to members of the press of a manuscript concerning the death of a prisoner in the hospital at the U.S. Penitentiary at Terre Haute.

14. The charge of misuse of mails against Plaintiff Saxner and his subsequent conviction of this charge by the I.D.C. was in violation of Plaintiff Saxner's rights to freedom of speech and press, as guaranteed to him by the First Amendment to the U.S. Constitution.

V. COUNT TWO

15. Plaintiffs reallege paragraphs 1–14 as is fully set forth herein.

16. On February 14, 1975, without any probable cause, Defendant G.D. Wilson searched Plaintiff Saxner's cell and seized numerous documents therein, to wit: a copy of a press release written by Plaintiff Saxner entitled "Prisoners at Terre Haute Seek an Investigation"; a letter written by Plaintiff Saxner to John Antonides, editor of a local Bloomington, Indiana, newspaper; notes taken by Plaintiff Saxner concerning conditions at the prison industries at the U.S. Penitentiary at Terre Haute; and copies of a press release written by Plaintiff Saxner regarding the death of William Lowe, previously a prisoner at the U.S. Penitentiary at Terre Haute.

17. This illegal search of Plaintiff Saxner's cell and seizure of Plaintiff Saxner's documents by Defendant Wilson violated rights guaranteed to Plaintiff Saxner by the Fourth Amendment to the U.S. Constitution.

VI. COUNT THREE

18. Plaintiffs reallege paragraphs 1-17 as if fully set forth herein.

19. As a result of being charged with and convicted of the above listed disciplinary offenses by the I.D.C., Plaintiff Saxner was placed in G Block segregation unit at the U.S. Penitentiary at Terre Haute from February 21, 1975, to February 28, 1975, and lost eighty-four days of good time.

20. The conditions of confinement imposed by the defendants and their agents in G Block were markedly more restrictive than those in the general population at the U.S. Penitentiary at Terre Haute, in that:

a. Plaintiff was confined in his cell for twenty four hours per day, except for showers;

b. Plaintiff was allowed only one shower per week;

c. Plaintiff was not allowed any recreation;

d. Plaintiff was not allowed any commissary privileges;

e. Plaintiff had neither a blanket, a pillow, nor a spring bed;

f. There was no window in Plaintiff's cell;

g. There was no light in Plaintiff's cell for the first four and one hald [sic] days he spent there;

h. There was no air vent in Plaintiff's cell to regulate heat;

i. Writing material was rationed to Plaintiff;

j. Plaintiff was not allowed books or newspapers in his cell;

k. Plaintiff had no access to a law library or to other legal material;

l. Plaintiff was not allowed any personal hygiene items in his cell;

m. Plaintiff was not allowed to use a broom, a toilet brush, or cleanser to clean his cell;

n. The quantity of food available to Plaintiff at each meal was less than in general population;

o. Plaintiff was refused dental care;

p. Plaintiff was denied work opportunities which should have resulted in meritorous [sic] good time and pay;

q. Toilet paper was distributed to Plaintiff by the handful as needed;

r. Plaintiff was denied a visit from Rev. Robert Horton, who is an approved visitor for any federal prisoner.

21. As a result of being charged with and convicted of the above disciplinary offenses by the I.D.C., Plaintiff Saxner was placed in L Block segregation unit at the U.S. Penitentiary at Terre Haute from February 28, 1975, to March 21, 1975.

22. The conditions of confinement imposed by the defendants and their agents in L Block were markedly more restrictive than those in the general population at the U.S. Penitentiary at Terre Haute, in that:

a. Plaintiff was confined in his cell for twenty-four hours per day, except for showers;

b. Plaintiff was allowed only two showers per week;

c. Plaintiff was allowed to recreate only once or twice each week for forty-five minutes each time;

d. Plaintiff had access to only an inadequate law library;

e. The quantity of food available to Plaintiff at each meal was less than in general population;

f. Plaintiff was denied work opportunities which should have resulted in meritorious good time and pay.

23. These conditions of confinement imposed by Defendants and their agents and the loss of good time were severely punitive and resulted in the infliction of substantial grievous loss on Plaintiff Saxner.

24. Plaintiff Saxner was placed and held in G Block and L Block segregation units in violation of due process of law, in that:

a. Plaintiff Saxner received no written notice of the charges of possession of contraband and misuse of mails prior to his hearing before the I.D.C. on February 21, 1975.

b. Plaintiff Saxner was not confronted with any substantive evidence on any of the three charges of which he was found guilty by the I.D.C. on February 21, 1975.

c. Plaintiff Saxner's conviction for misuse of mails was in violation of Bureau of Prisons Policy Statement 1220.1A, dated February 11, 1972, entitled, "Inmate Correspondence with Representatives of the Press and News Media."

d. Plaintiff Saxner was not allowed to call witnesses in his own behalf, even though to have done so would have presented no threat to prison security.

25. Plaintiff Saxner's confinement in segregation and loss of good time as punishment for the above disciplinary convictions were in violation of his right to due process of law guaranteed him by the Fifth Amendment to the U.S. Constitution.

26. As a direct and proximate result of defendants' violation of plaintiff Saxner's Fifth Amendment rights, plaintiff suffered lost wages, anxiety, mental anguish, and psychological harm.

VII. COUNT FOUR

27. Plaintiffs reallege paragraphs 1-26 as if fully set forth herein.

28. While confined in G Block segregation unit at the U.S. Penitentiary at Terre Haute as punishment for the above

disciplinary convictions, Plaintiff Saxner had no access to a law library or to legal material.

29. While confined in L Block segregation unit at the U.S. Penitentiary at Terre Haute, Plaintiff Saxner had access to only an inadequate law library.

30. Plaintiff Saxner's confinement in segregation as punishment for the above disciplinary convictions infringed on his right to access to the courts, guaranteed him by the Sixth Amendment to the U.S. Constitution.

31. As a direct and proximate result of defendant's violation of Plaintiff Saxner's Sixth Amendment rights as set forth above, Plaintiff Saxner suffered lost wages, anxiety, mental anguish, and psychological harm.

VII. COUNT FIVE

32. Plaintiffs reallege paragraphs 1-31 as if fully set forth herein.

33. The severely punitive conditions of confinement imposed by the Defendants and their agents, the length of Plaintiff Saxner's confinement, and the loss of good time constituted cruel and unusual and disproportionate punishment in violation of Plaintiff Saxner's rights guaranteed him by the Eight [sic] Amendment to the U.S. Constitution.

34. As a direct and proximate result of defendants' violation of Plaintiff Saxner's Eight [sic] Amendment rights as set forth above, Plaintiff Saxner suffered lost wages, anxiety, mental anguish, and psychological harm.

IX. COUNT SIX

35. Plaintiffs reallege paragraphs 1-34 as if fully set forth herein.

36. On February 14, 1975, without any probable cause, Defendant G.D. Wilson searched Plaintiff Cain's cell and seized numerous documents and publications therein.

37. This illegal search of Plaintiff Cain's cell and seizure of Plaintiff Cain's documents and publications by Defendant Wilson violated rights guaranteed to Plaintiff Cain by the Fourth Amendment to the U.S. Constitution.

38. As a direct and proximate result of defendant's violations of Plaintiff Cain's Fourth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to

his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

X. COUNT SEVEN

39. Plaintiffs reallege paragraphs 1-38 as if fully set forth herein.

40. On February 21, 1975, Plaintiff Cain was found guilty by the I.D.C. of charges of encouraging others to refuse to work and possession of contraband. As a result of being charged with and convicted of the above disciplinary offenses by the I.D.C., Plaintiff Cain was placed in L Block segregation unit at the U.S. Penitentiary at Terre Haute from February 21, 1975, to March 21, 1975, and lost ninety six days of good time.

41. The conditions of confinement imposed by the Defendants and their agents in L Block on Plaintiff Cain were markedly more restrictive than those in the general population at the U.S. Penitentiary at Terre Haute, in that:

a. Plaintiff was confined in his cell for twenty-four hours per day, except for showers;

b. Plaintiff was allowed only two showers per week;

c. Plaintiff was allowed to recreate only once or twice each week for forty-five minutes each time.

d. Plaintiff had access to only an inadequate law library;

e. The quantity of food available to Plaintiff at each meal was less than in general population;

f. Plaintiff was denied work opportunities which would have resulted in meritorious good time and pay;

g. Plaintiff was unable to pursue his course of studies in a college program from Vincennes University and to maintain his creditable grade point average.

h. Plaintiff lost certain personal property, which has yet to be returned to him, to wit:

1. a SONY transistor radio;
2. approximately twenty books;
3. items of clothing;
4. certain legal material.

42. These conditions of confinement imposed by the Defendants and their agents were severely punitive and resulted in the infliction of substantial grievous loss on Plaintiff Cain.

43. Plaintiff Cain was placed and held in L Block segregation unit in violation of due process of law, in that:

a. Plaintiff Cain received no written notice of the charge of posssession of contraband prior to his hearing before the I.D.C. on February 21, 1975;

b. Plaintiff Cain was not confronted with any substantive evidence on either of the two charges on which he was found guilty by the I.D.C. on February 21, 1975.

44. Plaintiff Cain's confinement in segregation and loss of good time as punishment for the above disciplinary convictions were in violation of his right to due process of law guaranteed him by the Fifth Amendment to the U.S. Constitution.

45. As a direct and proximate result of defendants' violations of Plaintiff Cain's Fifth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

XI. COUNT EIGHT

46. Plaintiffs reallege paragraphs 1-45 as if fully set forth herein.

47. While confined in L Block segregation unit at the U.S. Penintentiary at Terre Haute, Plaintiff Cain had access to only an inadequate law library.

48. Plaintiff Cain's confinement in segregation as punishment for the above disciplinary convictions infringed on his right to access to the courts, guaranteed him by the Sixth Amendment to the United States Constitution.

49. As a direct and proximate result of defendants' violations of Plaintiff Cain's Sixth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

XII. COUNT NINE

50. Plaintiffs reallege paragraphs 1-49 as if fully set forth herein.

51. The severely punitive conditions of confinement imposed by the Defendants and their agents, the length of Plaintiff Cain's confinement, and the loss of good time constituted both cruel and unusual and disproportionate punishment, in violation of Plaintiff Cain's rights guaranteed him by the Eighth Amendment to the United States Constitution.

52. As a direct and proximate result of defendants' violations of Plaintiff Cain's Eighth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

XIII. COUNT TEN

53. Plaintiffs reallege paragraphs 1-10 as if fully set forth herein.

54. Between November 11, 1975, and November 24, 1975, Plaintiff Cain suffered the following deprivations as a result of conduct of the Defendants:

a. On November 11, 1975, without any provocation by Plaintiff Cain, defendant Wilson physically abused Plaintiff Cain, to wit: Defendant Wilson threw Plaintiff Cain against a wall, knocked Plaintiff Cain's eyeglasses to the ground, and punched Plaintiff Cain numerous times. At no time did Plaintiff Cain strike Defendant Wilson.

b. From November 13, 1975, to Novemer 24, 1975, Plaintiff Cain was placed on unit restriction by the Defedants.

55. While on unit restriction, Plaintiff Cain was subject to conditions of confinement which were markedly more restrictive than those in general population without unit restriction, in that:

a. Plaintiff was denied recreation;

b. Plaintiff was not allowed to attend meetings;

c. Plaintiff was denied access to the law library;

d. Plaintiff was denied access to the educational facilities;

e. Plaintiff was denied access to commissary.

56. These deprivations as a result of the conduct of the Defendants and their agents were severely punitive and resulted in the infliction of substantial grievous loss on Plaintiff Cain.

57. Plaintiff Cain suffered these deprivations in violation of due process of law, in that he was never charged with any disciplinary offense with regard to these events nor received a hearing of any kind with attendant procedural safeguards.

58. The deprivations suffered by Plaintiff Cain between November 11, 1975, and November 24, 1975, as a result of the conduct of the Defendants were in violation of his right to due process of law guaranteed him by the Fifth Amendment to the U.S. Constitution.

59. As a direct and proximate result of defendants' violations of Plaintiff Cain's Fifth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

XIV. COUNT ELEVEN

60. Plaintiffs reallege paragraphs 53-59 as if fully set forth herein.

61. The deprivations suffered by Plaintiff Cain between November 11, 1975, and November 24, 1975, as a result of the conduct of the Defendants constituted both cruel and unusual and disproportionate punishment, in violation of Plaintiff Cain's rights guaranteed him by the Eighth Amendment to the U.S. Constitution.

62. As a direct and proximate result of defendants' violations of Plaintiff Cain's Eighth Amendment rights as set forth above, Plaintiff Cain suffered lost wages, detriment to his educational progress, delay in the effective date of his parole, anxiety, mental anguish, and physical and psychological harm.

XV. COUNT TWELVE

63. Plaintiffs reallege paragraphs 1-62 as if fully set forth herein.

64. At all times Defendant Benson was aware of Plaintiffs' illegal and unconstitutional confinement and yet refused to allow plaintiffs to be released from such segregation.

65. As a direct and proximate result of Defendant Benson's failure to release Plaintiffs from the illegal confinement, Plaintiffs suffered violation of their First, Fourth, Sixth and Eighth Amendment constitutional rights, including physical and psychological harm.

XVI. RELIEF

WHEREFORE, Plaintiffs pray that this court:

A. Order that Plaintiff Cain be compensated for any and all personal property seized from Plaintiff Cain.

B. Order that Plaintiffs be compensated for the back wages not earned because of the illegal conduct of the Defendants and their agents.

C. Order that Defendants compensate Plaintiff Cain for one new pair of eyeglasses.

D. Order that Plaintiff Saxner be awarded thirty five thousand dollars ($35,000) and Plaintiff Cain be awarded forty thousand dollars ($40,000) to compensate them for anxiety, mental anguish, physical and psychological harm, and detriment to educational progress.

E. Order such other and further relief as this court deems just, proper, and equitable.

Respectfully submitted,

/s/ _____

MICHAEL DEUTSCH
110 S. Dearborn, Room 707
Chicago, Illinois 60603
312/236-3504
Attorney for Plaintiffs

Plaintiffs demand trial by jury.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

Case No. TH 75-47-C

DAVID SAXNER AND ALFRED CAIN, JR., PLAINTIFFS

vs.

CHARLES BENSON, ET AL., DEFENDANTS

ORDER

This matter is before the Court upon Plaintiffs' Motion for Reconsideration of Dismissal of Defendants Marcadis, Cleavenger [sic], and Lockett. The parties have supplied the Court with authority for their respective positions.

The Defendants Cleavenger [sic], Marcadis, and Lockett were initially dismissed from this action when the holding in *Butz* v. *Economou*, 434 U.S. 478 (1978) was extended to grant absolute immunity to the members of the Institution Discipline Committee (I.D.C.) which was made up of the above three Defendants in this case. Since the Court's ruling, the United States Circuit Court of Appeals for the Seventh Circuit in *Mary and Crystal* v. *Gerald Ramsden et al*, Nos. 78-1954 and 78-1955 (7th Cir. Nov. 21, 1980), held that the I.D.C. at a Wisconsin juvenile correctional institution was not entitled to absolute immunity under the doctrines espoused in *Butz* v. *Economou*, *supra*. The Court stated:

> We think this function of imposing discipline more similar to that of the school board members in *Wood* v. *Strickland*, 420 U.S. 308 (1975) than to that of a judge.

While the I.D.C. members at a federal prison may perform more functions similar to that of a judge than I.D.C. members at a Wisconsin juvenile federal correctional institution, the Seventh Circuit's holding as stated above shows a general inclination on the part of the appellate courts of the country not to extend absolute immunity doctrine to members of I.D.C.'s. Consequently, the Court finds that Defend-

ants Cleavenger [sic], Marcadis, and Lockett should be brought back into this litigation and Plaintiff's Motion for Reconsideration is hereby GRANTED. The above three Defendants will still be able to assert qualified good faith immunity as a defense.

IT IS SO ORDERED

DATED at Terre haute, Indiana this 24th day of April, 1981.

/s/ _____

GENE E. BROOKS,
Judge
United States District Court
Southern District of Indiana

COPIES TO:

PATRICIA J. HANDLIN
343 South Dearborn
Suite 1717
Chicago, Illinois 60604

ROBERT KENDALL
Special Litigation Service
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

BUREAU OF PRISONS
WASHINGTON, D.C. 20537

POLICY STATEMENT

7400.5C

SUBJECT: INMATE DISCIPLINE

10-4-74

1. *PURPOSE*. This statement of policy is to assure that inmate discipline and control are fully consonant with the correctional objectives of the institution, the focus being on (a) individual inmate adjustment to the programs, behavior standards, and limitations necessarily imposed by the administration; (b) the general welfare and safety of the institutional community; and, (c) the incorporation of due process standards for inmate disciplinary hearings as prescribed by the Supreme Court in *Wolff v. McDonnell*, ___U.S. ___, 94 Ct. 2963, ___ L.Ed 2d ___ (1974).

2. *DIRECTIVES AFFECTED*. Policy Statements 7400.5B and 7400.6A are superceded.

3. *POLICY*. It is the policy of the Federal Bureau of Prisons to maintain an institutional climate in all of its facilities so that every inmate may complete his term of confinement with a minimum of corrosive effect and a maximum gain in his ability to more adequately maintain a successful community adjustment following release. In order that the majority of inmates might live in a safe and orderly environment, it is necessary that those individuals whose behavior is in noncompliance with institution rules be brought to the attention of the appropriate authorities.

Disciplinary action is but one factor in correctional treatment and control. There are other individualized correctional programs and goals that shall be given consideration by the administration. The objective of this approach is the future voluntary acceptance of institution regulations which are required for the general welfare of the institution community and serve as an aid to law-abiding behavior following release.

4. *ACTION*. A single Institution Discipline Committee will be established in each Bureau of Prisons Institution. The Committee will be composed of at least three (3) members, of whom two (2) will be of department head level or above; the Chairman will be of the level of department head or above. This requirement as to the level of members will not apply to Community Treatment Centers or Camps.

The Chief Executive Officer of each institution will delegate to the Institution Discipline Committee the authority to order an inmate placed or retained in disciplinary segregation, to order the witholding or forfeiture of good time, and to order an inmate transferred for disciplinary reasons. The authority to impose sanctions other than disciplinary segregation, withholding or forfeiture of good time and transfer for disciplinary reasons will be lodged in such person or persons as the Chief Executive Officer may direct. Where the institution has a unit management system, the authority to impose these lesser sanctions will be delegated to staff members in the inmate's unit.

Each institution having the need for facilities to house inmates separate from the general population will establish special housing units consisting of two types: Administrative Detention and Disciplinary Segregation.

An inmate may be placed in Administrative Detention where his attitude and conduct indicate that his continued presence in the general population poses a serious threat to life, property, himself, staff, other inmates or to the security of the institution, and where the inmate:

(a) Is pending a hearing for a violation of institution rules or regulations;

(b) Is pending an investigation of a violation of institution rules or regulations;

(c) Is pending investigation or trial for a criminal act:

(d) Requests admission to the administrative detention area for his own protection; or

(e) Is in holdover status during transfer;

(f) Pending classification.

An inmate may be placed in disciplinary segregation where his continued presence in the general population

poses a serious threat to himself, staff, or other inmates or to the security of the institution and where the Institution Discipline Committee directs following a hearing conducted in accordance with the limited due process requirements as outlined in paragraph 9 of this policy statement in which the inmate has been found to have committed a serious violation of institution rules or regulations.

5. *GENERAL PRINCIPLES*. The following general principles shall be applicable in every disciplinary action taken:

(a) Disciplinary action shall be taken at such times and in such measures and degree as is necessary to regulate an inmate's behavior within acceptable limits;

(b) Inmate behavior shall be controlled in a completely impartial and consistent manner;

(c) Disciplinary action shall not be capricious, retaliatory, or for the purpose of revenge.

(d) Corporal punishment of any kind is strictly prohibited.

(e) Accurate, detailed reports of disciplinary actions shall be maintained in accordance with the requirements of this policy statement.

6. *INFORMATION TO INMATES*. Each inmate is to be advised in writing at the time of arrival at an institution of:

(a) His rights and responsibilities;

(b) Acts prohibited in the institutions;

(c) The types of disciplinary action which may be taken; and

(d) The disciplinary system within the institution.

This information will be provided in booklet or pamphlet form as part of the admission orientation program. A signed receipt will be obtained from each inmate acknowledging that he has received a copy of the booklet or pamphlet.

(e) Rights and Responsibilities

RIGHTS	RESPONSIBILITIES
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility to not waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with the facility rules and schedules. You also have a right to uncensored and uninspected out going correspondence with members of the news media through the Prisoners' Mail Box System. Letters forwarded to the news media through PMB are subject to the regulations of that System.	5. It is your responsibility to conduct yourself properly during visits, to not accept or pass contraband, and to not violate the law through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and to conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.

7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the material.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the publishers.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training, and employment as far as rescources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.

(f) *Prohibited Acts in Federal Penal and Correctional Institutions*

001	Killing
002	Assaulting any person
003	Fighting with another person
004	Threatening another with bodily harm, or with any offense against his person or his property
005	Extortion, blackmail, protection: demanding or receiving money or any thing of value in return for protection against others, to avoid bodily harm, or under threat of informing
051	Engaging in sexual acts with others
052	Making sexual proposals or threats to another
053	Indecent exposure
101	Escape
102	Attempting or planning escape
103	Wearing a disguise or mask
151	Setting a fire

152 Destroying, altering, or damaging government property, or the property of another person
153 Stealing (theft)
154 Tampering with or blocking any locking device
155 Adulteration of any food or drink
201 Possession or introduction of an explosive or any ammunition
202 Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool
203 Possession, introduction, or use of any narcotics, narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical staff
204 Misuse of authorized medication
205 Possession of money or currency, unless specifically authorized
206 Possession of property belonging to another person
207 Loaning of property or anything of value for profit or increased return
208 Possession of any thing not authorized for retention or receipt by the inmate, and not issued to him through regular institutional channels
209 Possessing any officer's or staff clothing
210 Possessing unauthorized clothing
211 Mutilating or altering clothing issued by the government
251 Rioting
252 Encouraging others to riot
253 Engaging in, or encouraging, a group demonstration
254 Refusing to work, or to accept a program assignment
255 Encouraging others to refuse to work or participate in work stoppage
256 Refusing to obey an order of any staff member
257 Violating a condition of furlough
301 Unexcused absence from work, or any assignment
302 Malingering, feigning an illness
303 Failing to perform work as instructed by a supervisor
304 Insolence towards a staff member
305 Lying or providing a false statement to a staff member
306 Conduct which disrupts or interferes with the security or orderly running of the institution

351 Counterfeiting, forging, or unauthorized reproduction of any document, article of identification, money, security, or official paper
401 Participating in an unauthorized meeting or gathering
402 Being in an unauthorized area
451 Failure to follow safety or sanitation regulations
452 Using any equipment or machinery which is not specifically authorized
453 Using any equipment or machinery contrary to instructions or posted safety standards
501 Failing to stand count
502 Interfering with the taking of count
551 Making intoxicants
552 Being intoxicated
553 Smoking where prohibited
554 Using abusive or obscene language
601 Gambling
602 Preparing or conducting a gambling pool
603 Possession of gambling paraphernalia
651 Being unsanitary or untidy: failing to keep one's person and one's quarters in accordance with posted standards
652 Tattooing or self-mutilation
701 Unauthorized use of mail or telephone
702 Unauthorized contacts with the public
703 Correspondence or conduct with a visitor in violation of posted regulations
751 Giving or offering any official or staff member a bribe, or anything of value
752 Giving money or any thing of value to, or accepting money or any thing of value from; another inmate, a member of his family, or his friend
801 Attempting to commit any of the above offenses, aiding another person to commit any of the above offenses, and making plans to commit any of the above offenses shall be considered the same as a commission of the offense itself.

7. *INCIDENT REPORT AND INVESTIGATION.*

(a) *Incident Report:* Informal resolution of incidents involving violations of institution rules or regulations is encouraged. However, where an employee witnesses or has a reasonable belief that a violation of institution rules or regulations has been committed by an inmate, and where the employee deems that informal resolution of the incident is unwarranted, the employee shall prepare an incident report and forward it to the appropriate correctional supervisor. The appropriate correctional supervisor may informally dispose of the incident report or forward the incident report for further disposition consistent with this policy statement.

The reporting employee should complete Part 1 of the incident report immediately. The incident is to be one of the Prohibited Acts listed in paragraph 6(f) of this policy statement. The entire language of the Prohibited Act(s) does not have to be copied. Only the relevant portion need be used. example, "Destroying Government Property, Code No. 152," "Possessing narcotics, Code No. 801" would be acceptable listings for appropriate charges.

The description of the incident should contain the details of the activity which is being reported. All facts about the incident which are known by the employee should be recorded. If there is anything unusual about the inmate's behavior, this should be noted. The reporting employee should also list any staff or inmate witnesses to the incident, and the disposition of any physical evidence (weapons, property, and etc.) which the employee may have personally handled. The reporting employee will sign the report and indicate his title in the appropriate blocks. The incident report should then be forwarded to the appropriate correctional supervisor for disposition.

(b) *Investigation:* The investigation should be conducted within 24 hours of appointment of the investigator, unless circumstances beyond the control of the investigator intervene. The investigating officer should ordinarily be an employee of supervisory level and may

not be the employee reporting the particular incident in question. Where it appears likely that the incident may be the subject of a criminal prosecution, investigation should be suspended and the inmate should not be questioned until the FBI interviews have been completed. (See Policy Statement 2200.1.)

Ordinarily, an inmate will be given a copy of the incident report by the investigating officer at the beginning of the investigation. If the investigation is delayed for any reason, any employee may deliver the charges to the inmate. The date and time the inmate receives a copy of the Incident Report will be noted. This should be done within eight (8) hours from the time the investigator received his assignment, unless there are exceptional circumstances which prevent it. The investigator should also read the charges to the inmate and obtain his statement concerning the incident, except as provided above. Comment about the inmate's attitude may be included here.

The investigator should then thoroughly investigate the incident. He should talk to witnesses, and summarize their statements. The disposition of evidence should be recorded. Often, he will want to talk to the reporting employee to obtain his report first hand and to clarify any questions the investigator may have. All steps and actions taken should be recorded on the incident report.

Under Comments and Conclusions, the investigator may include his comments on the inmate's prior record and behavior, his analysis of any conflicts between witnesses, and his conclusions of what in fact happened. The inmate does not receive a copy of the investigation. However, should the case ultimately be forwarded to the Institution Discipline Committee, the investigation should be given to the inmate's staff representative for use in presentation on the inmate's behalf.

8. *MINOR DISPOSITIONS.* The Chief Executive Officer of each institution shall delegate to such persons he selects the authority to impose minor dispositions and sanctions for violations of institution rules or regulations. Where the institution has a unit management system, the authority to

impose minor dispositions and sanctions shall be delegated to staff member of an inmate's unit. Minor dispositions and sanctions are those actions imposed for violation of institution rules or regulations other than segregation, withholding or forfeiture of good time, and transfer for disciplinary reasons. While the process by which minor dispositions are imposed is left to the discretion of the Chief Executive Officer of each institution, the following minimum standards will apply throughout the Bureau of Prisons:

(a) Each inmate charged with violating an institution rule or regulation shall be given a written copy of the charge or charges against him within 24 hours of the infraction.

(b) Each inmate so charged will be entitled to a hearing held within 48 hours (excluding weekends and holidays) of the incident to consider the charge brought against him.

(c) The inmate will be entitled to be present at the hearing except during deliberations of the decision maker and where institutional security would be jeopardized. The reasons for excluding an inmate from the hearing must be well documented in the record.

(d) The inmate will be afforded the opportunity to make a statement and to present documentary evidence in his own behalf.

(e) The inmate will be given a written copy of the decision and disposition. Review of any action taken as a minor disposition will be pursuant to the Administrative Remedy Procedure, Policy Statement 2001.6A.

(f) Where an alleged violation of institution rules or regulations warrants consideration for other than minor sanction, the charge may be referred to the Institution Discipline Committee for hearing and disposition. Copies of all relevant documents should be forwarded to the Chairman of the Institution Discipline Committee with a brief statement of reasons for the referral along with any recommendations for appropriate disposition should the inmate be found to have committed the act charged.

(g) When charges are to be referred to the Institution Discipline Committee, the inmate shall be advised of

the rights afforded at a hearing before the Institution Discipline Committee. He shall be asked to indicate his choice of staff representative and the names of any witnesses he wishes to be called to testify on his behalf at the hearing. (A sample form that may be used for this purpose is attached to this policy statement. Time limits imposed in this section may be extended for good cause.)

(h) Where the person or persons delegated the authority to impose minor dispositions determines that the inmate is innocent of committing any prohibited act, the inmate's file shall be expunged of the incident report lodged against him.

9. *INSTITUTION DISCIPLINE COMMITTEE.*

(a) *Composition:* The Chief Executive Officer may appoint as many members to the Institution Discipline Committee as he deems appropriate. No fewer than three members, including the Chairman, must be present at any hearing to constitute a quorum. The Chairman and no less than one member present at the hearing will be of the department head level or higher. The third member of the Committee need not be of department head level. For the purposes of this section, "department head" includes acting department head. This requirement as to the level of staff members and Chairman will not apply to Community Treatment Centers or Camps. In order to insure impartiality, a staff member may not sit as a member of the Institution Discipline Committee if he reported or investigated the incident of rules infraction being considered. Ordinarly a staff member witnessing an incident under consideration should not sit as a member of the Institution Discipline Committee. However, a staff member witnessing an incident may sit as a member of the Institution Discipline Committee where the incident is so widely witnessed that virtually every staff member has witnessed it in whole or part. Likewise, a staff member may not sit as a member of the Institution Discipline Committee if he played any signifcant part in having the charges referred to the Institution Discipline Committee for consideration. The Chief Executive Officer should appoint

members to this Committee who are broadly representative of the primary areas of institutional administration and who are fully knowledgeable of the requirements of this policy statement and of the functions of Inmate Discipline.

(b) *Functions:* The Institution Discipline Committee shall conduct hearings, make findings, and may impose appropriate sanctions on incidents of inmate misconduct referred to it for disposition in accordance with the due process standards as listed below. While this Committee may impose any lesser sanctions available, only this Committee will have the authority to order: (1) an inmate placed in disciplinary segregation, (2) an inmate's good time withheld or forfeited, or (3) an inmate transferred to another institution for disciplinary reasons. This Committee will also conduct reviews of inmates placed in disciplinary segregation in accordance with requirements listed below.

(c) *Procedural Requirements:* An inmate may not be placed in disciplinary segregation, or have his good time withheld or forfeited, or be transferred to another institution for disciplinary reasons unless there has been a fact-finding hearing before the Institution Discipline Committee in which the following procedures have been satisfied:

(1) An inmate will be given advance written notice of the charge(s) against him no less than 24 hours before his appearance before the Institution Discipline Committee. An inmate may waive in writing this 24 hour notice requirement.

(2) An inmate will be provided the service of a full-time staff member to represent him at the hearing before the Institution Discipline Committee should he so desire. The Chairman shall arrange for the presence of a selected staff representative. If the staff member selected declines or is unavailable because of absence from the institution, the inmate should be given the options of selecting another representative, or in the case of an absent staff member, of waiting a reasonable period for his return, or continuing the hearing without a staff representative. A staff representative should be given adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Chairman of the Institution Discipline Committee.

(3) An inmate will be permitted to have witnesses called and to present documents in his behalf, provided the calling of witnesses or the disclosure of documentary evidence would not jeopardize or threaten institutional security. The Chairman will call those witnesses he deems reasonably available and necessary for an appreciation of the circumstances surrounding the charge. Repetitive witnesses need not be called. Unavailable witnesses may be asked to submit written statements. Reasons for declining to call requested witnesses will be documented in the Committee's report. Witnesses requested by the inmate who are called should be questioned by his staff representative or where staff representation has been waived, by members of the Committee. Inmates who have waived the services of a staff representative may submit questions for requested witnesses in writing to the Committee.

(4) The Institution Discipline Committee will prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision, the specific evidence relied on by the Committee, and a brief statement of the reasons for the sanctions imposed. The evidence relied upon for the decision and the reasons for the actions taken should be set out in specific terms unless doing so would jeopardize institutional security. (A sample form that may be used to advise an inmate of his rights at an Institution Discipline Committee hearing is attached to this policy statement.)

(5) An inmate will be permitted to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee and except where institutional security would be jeopardized. The reasons for excluding an inmate from the hearing must be well documented in the record. A hearing may be conducted in the absence of an inmate where the inmate refuses to appear and he cannot be brought to the hearing without the use of force. When an inmate escapes from custody, the Institution Discipline Committee will conduct a hearing in the inmate's absence at the institution from which the escape occurred. When an inmate who has had sanctions imposed (such as loss of good time) while absent from custody, returns to custody, he will be advised of his right to have the escape charge brought before the Institution Discipline committee at the institution where he returned to custody. All the procedural requirements of Institution Discipline Committee hearings will apply to this rehearing except written statements of witnesses not readily available may be liberally used instead of live witnesses. The Institution Discipline Committee, upon rehearing, may dismiss the charge, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(d) *Dispositions of the Institution Discipline Committee:* The Institution Discipline Committee shall have available a broad range of sanctions and dispositions. These dispositions and sanctions will include the following:

The Institution Discipline Committee may

(1) Dismiss any charge(s) before it where appropriate and shall order the record of charges expunged where the inmate has been determined innocent of the charge(s).

(2) Impose sanctions and dispositions available to the person or persons designated to impose minor dispositions.

(3) Direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this policy statement.

(4) Direct that an inmate's good time be withheld. Withholding of good time should be limited to misconduct or offenses; it should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding shall be limited to the good time creditable for the single month during which the violation occurs. (Some offenses, such as refusal to work at an assignment, may be recurring, and thus may permit consecutive withholding actions.) Withheld good time may be considered for restoration at any time.

(5) Direct that an inmate's good time be forfeited. The good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 United States Code, Section 4161 (less any previous forfeiture or withholding outstanding), plus extra good time which may have been earned to the date of the offense. All or part of an inmate's accumulated good time may be forfeited. Authority to restore all types of forfeited and withheld good time is delegated to the Institution Discipline Committee of each institution. Forfeited good time may be considered for restoration at any time.

(6) Direct that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, an inmate may be transferred prior to an Institution Discipline Committee hearing. However, a hearing before the Institution Discipline Committee at the receiving institution must be conducted as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. Transfers for disciplinary reasons prior to a hearing before the Institu-

tion Discipline Committee are to be used only in emergency situations and only with the approval of the receiving Regional Director. However, when an inmate is transferred under these circumstances, the sending institution will forward copies of incident reports with completed investigation to the receiving institution for purposes of the hearing before the receiving institution's Institution Discipline Committee. All procedural requirements applicable to Institution Discipline Committee hearings contained in paragraph 9 (c) of this policy statement will be utilized, except written statements of unavailable witnesses may be liberally accepted instead of live testimony.

(7) Suspend the execution of any sanction it imposes.

(e) *Criminal Prosecutions:* Where an inmate's misconduct may also be the subject of a criminal prosecution, it is not necessary to await the outcome of the criminal trial before taking disciplinary action, especially if there is reason to believe there will be a long delay before the trial is held. An inmate under investigation of the FBI or other law enforcement officers for an offense committee in the institution may not be questioned about the charge until the FBI interviews are completed. An inmate who is the subject of criminal prosecution for institutional violations will not be transferred from the jurisdiction of the trial court without the consent of the appropriate United States Attorney or the Court in which the trial is pending.

10. *APPEALS FROM INSTITUTION DISCIPLINE COMMITTEE ACTIONS.* At the time the Institution Discipline Committee gives an inmate notice of its decision, the Committee will also advise the inmate that he may appeal the Committee's decision to the Chief Executive Officer. Appeals must be filed no later than thirty (30) days after notice of the decision. This time limit may be extended for good cause shown. An inmate wishing to appeal any disciplinary action imposed as a result of a hearing before the Institution

Discipline Committee must use the procedures and forms provided for by Policy Statement 2001.6A (Administrative Remedy of Complaints Initiated by Offenders in Bureau of Prisons Facilities). The Chief Executive Officer may approve, modify, or reverse any disciplinary action of the Institution Discipline Committee as he deems appropriate. This authority may not be delegated. The Chief Executive Officer may not increase the amount of forfeiture imposed.

An inmate may appeal an adverse decision of the Chief Executive Officer through the appeal procedures contained in Policy Statement 2001.6A to the appropriate Regional Director. Appeals to the Regional Director from adverse decisions from the Chief Executive Officer must be filed no later than thirty (30) days from the date of the Chief Executive Officer's decision.

Additionally, appeals of adverse decision from the Regional Director may be made to the Assistant Director, General Counsel and Review within thirty (30) days of the decision from the Regional Director.

On appeal the following factors will be considered:

(a) Was there substantial compliance with the Policy Statement on Inmate Discipline?

(b) Was the decision of the Institution Discipline Committee based on substantial evidence?

(c) Under the circumstances, was the sanction imposed disproportionate to the offense?

11. *SPECIAL HOUSING UNITS.* Each institution having the need for facilities to house inmates separate from the general population will establish special housing units consisting of two types: Administrative Detention and Disciplinary Segregation. (Some institutions may also have a facility for long-term control unit programs—see Policy Statement 7300.80.) Special Housing Units will be maintained in accordance with the policies and procedures contained in this policy statement.

(a) *Administrative Detention:* Administrative Detention is the status of confinement which results in a loss of some privileges which the inmate would have if assigned to the general population. Administrative Deten-

tion is to be used only where the continued presence of the inmate in general population poses a serious threat to life, property, himself, other inmates, staff members or the security of the institution.

(1) *Placement in Administrative Detention:* An inmate may be placed in Administrative Detention by persons designated by the Chief Executive Officer. These persons may be correctional supervisors, shift supervisors or members of an inmate's unit or team. An inmate may be placed in Administrative Detention for any of the following reasons:

a. Pending a hearing for a violation of institution rules or regulations;

b. Pending an investigation of a possible violation of an institution rule, but where charges have yet to be lodged;

c. Pending investigation or trial for crimes committed in the institution;

d. An inmate requests admission to the Administrative Detention area for his own protection;

e. An inmate in holdover status awaiting transfer; or

f. Pending classification.

A memorandum detailing the reason for placing an inmate in Administrative Detention will be prepared and given to members of the inmate's unit or team, with a copy to the Operations Supervisor of the Administrative Detention Unit. A copy of this memorandum will also be given to the inmate provided institutional security is not thereby compromised.

(2) *Review of Inmates Housed in Administrative Detention:* The Chief Executive Officer shall designate such person or persons he deems appropriate to review the status of inmates housed in Administrative Detention. Normally the Operations Supervisor of the Administrative Detention unit or members of

the inmate's unit or team should be delegated this authority. Initial placement shall be accomplished by means of a memorandum detailing the reasons for this action. Thereafter, the reviewing authority will review the status of each inmate at least once a week. The reviewing authority will formally review each inmate who spends ten (10) continuous days in Administrative Detention, and thereafter such cases will be formally reviewed at least every 30 days. The inmate shll appear before the reviewing authority at such formal reviews unless the inmate refuses to appear without the use of force. Administrative Detention is to be used only for short periods of time except where an inmate needs long-term protection. An inmate may be kept in Administrative Detention for long-term protection where the need for such protection is well documented. Inmates shall be released when the reason for their initial placement ceases to exist or where their return to general population would no longer pose a serious threat to themselves, to staff or other inmates or the security of the institution.

(3) *Conditions of Administrative Detention:* The basic level of conditions as described below for Disciplinary Segregation will also apply to Administrative Detention. To the extent possible, inmates housed in Administrative Detention will be afforded the same general privileges given to inmates in general population as is consistent with existing resources available and the security needs of the unit. Unless there are compelling reasons to the contrary, institutions should provide commissary privileges, reasonable amounts of personal property, and exercise periods exceeding those provided for inmates housed in Disciplinary Segregation. Visiting and correspondence privileges of the general population should be given inmates in Administrative Detention.

(b) *Disciplinary Segregation:* Disciplinary Segregation is the status of confinement of an inmate housed in an individual cell either by himself or with other in-

mates, separated from the general population, as a result of a hearing before the Institution Discipline Committee in which the inmate has been found to have committed a prohibited act. Inmates housed in Disciplinary Segregation will have significantly fewer privileges than those housed in Administrative Detention. Disciplinary Segregation is to be used only where other available dispositions are inadequate to regulate an inmate's behavior within acceptable limits and where the inmate's presence in the general population poses a serious threat to life, property, to himself, staff or other inmates or the security of the institution.

(1) *Placement in Disciplinary Segreation:* An inmate may be placed in Disciplinary Segregation only by direction of the Institution Discipline Committee following a hearing in which the inmate has been found to have committed a serious act of misconduct which warrants this serious sanction. Inmates found to have committed serious acts of misconduct should not be placed in Disciplinary Segregation unless their presence in general population would pose a serious threat to staff or other inmates or to the security of the institution.

(2) *Review of Inmates in Disciplinary Segregation:* Inmates placed in Disciplinary Segregation will be reviewed by the Institution Discipline Committee at least once a week on the record. The Committee will formally review the cases of all inmates who spend ten (10) continuous days in Disciplinary Segregation, and thereafter such cases will be formally reviewed at least every thirty (30) days. The inmate shall appear before the Institution Discipline Committee at such formal reviews unless the inmate refuses to appear without the use of force.

There will be a psychiatric or psychological interview when Disciplinary Segregation continues beyond thirty (30) days. The interview and report should address the inmate's adjustment to his surroundings and the threat the inmate poses to himself, staff and other inmates. A similar psychiatric or psychological interview and report will be made at subsequent two month intervals should segregation continue for this extended period.

An inmate shall be released from Disciplinary Segregation when he no longer poses a threat to himself, or others or to institutional security and when the Institution Discipline Committee determines that continuation in Disciplinary Segregation is no longer necessary to regulate an inmate's behavior within acceptable limits. The time an inmate spends in Disciplinary Segregation must be proportionate to the offense committed, taking into consideration the inmate's prior conduct, his specific program needs, and other relevant factors.

(3) *Conditions of Disciplinary Segreation:*

(a) Basic living levels of decency and humane treatment must be maintained, regardless of the purpose for which a man has been segregated. Privileges may be added, for the purpose of reinforcing acceptable behavior, to the living conditions of those whose status is purely involuntary, or whose confinement is long-term. These should not result in excessively time-consuming procedures, or neutralize security or shakedown procedures.

(b) When different levels of living arrangements are effected, because of the difference in purpose of segregation, the differential facilities should be separated physically in ways that materials allowed to one person are not passed to others to whom they are not allowed.

(c) A description of basic living levels follows:

1. *Segregation Conditions:* The quarters used for segregation shall be well ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells will be equipped with beds. The beds may be securely fastened to the floor or wall of the cell according to the desires and needs of each

individual institution. Strip cells will not be a part of the Segregation Unit. Any strip cells which will be utilized will be a part of the medical facility and under the supervision and control of the medical staff.

2. *Cell Occupancy:* Except in emergencies the number of inmates confined to each cell or room shall not exceed the number for which the space was designed. Whenever an emergency arises which indicates that excess occupancy may be temporarily needed, an immediate report shall be made to the head of the institution and his approval obtained.

3. *Clothing and Bedding:* All inmates shall be admitted to segregation dressed in normal institution clothing after a thorough search for contraband but without belt and shall be furnished a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate shall not be segregated without clothing, mattress, blankets and pillow, except when prescribed by Medical Officer for medical or psychiatric reasons. If an inmate is so seriously disturbed that he is likely to destroy his clothing or bedding or create a disturbance which would be seriously detrimental to others, the Medical Department shall be notified immediately and a regimen of treatment and control instituted with the concurrence of the Medical Officer.

4. *Food:* As prescribed in existing regulations, segregated inmates shall be fed the normal institution meals on the standard ration and menu of the day for the institution. Disposable utensils may be used when necessary.

5. *Personal Hygiene:* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene, e.g. toilet tissue, wash basin, tooth brushing, eye glasses,

etc. When necessary, for reasons of safety or security, a retrievable kit of toilet articles may be issued. Each segregated inmate should shave and shower at least two (2) times a week, unless these procedures would present an undue security hazard.

6. *Exercise:* Each segregated inmate shall be permitted no less than two (2) hours exercise each week. Exercise should be provided in two (2), one (1) hour periods, but if circumstances require, one-half hour periods are acceptable if the two (2) hour minimum is maintained. This provision must be carried out unless compelling security or safety reasons dictate otherwise and these shall be documented.

7. *Personal Property:* Personal property will ordinarily be impounded.

8. *Reading Material:* Ordinarily, it may be provided on a circulating basis.

9. *Supervision.* In addition to the direct supervision afforded by the unit officer each segregated inmate shall be seen daily by a member of the Medical Department, and one or more other responsible officer(s) designated in the local policy issuance.

10. *Correspondence and Visits:* Social correspondence privileges shall be continued in segregation unless there exist compelling reasons to the contrary. Every effort will be made to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, the burden of this notification may be placed on the inmate. In respect to legal, religious, and PMB matters, the relevant policy statements should be followed.

11. *Records:*

a. A permanent log will be maintained in the segregation unit. All admissions will be recorded indicating date, reason for admission, and the authorizing official. All releases from the unit will be similarly recorded. Officials required to visit the unit will sign this log, giving time and date of visit. Unusual activity or behavior of indivdual inmates will be recorded in the log with a follow-up memorandum through the head of the institution for the inmate's file. This will include any misbehavior which should be recorded and reported to the Institution Discipline Committee.

b. A Special Housing Unit Record Sheet (BP-IS-111) will also be maintained in accordance with the following instructions, and sent to the institution's central file.

1. The Key at the bottom of the form is self-explanatory.

2. The basic information at the top of the form, with the exception of the date and time of release, will be completed by the Officer in Charge/Unit Officer at time of admittance.

3. The form provides space for a period of up to ten (10) days. The date column will be recorded daily, the shift line will be completed commencing so as to coincide with the date and time the inmate is admitted as reflected at the top of the form.

4. The Officer in Charge/Unit Officer will sign the form in the space provided on line with the shift as indicated. Initials of the officer are not acceptable.

5. The Physician's Assistant will indicate by his signature in the proper space when an inmate received medication, is examined by a Medical Officer or Physician's Assistant, or request [sic] to see a member of the

medical staff. If no medication is received or request made during a shift, the officer may so indicate by recording "NO (N)" in the column.

6. The form is designed for a ten (10) day period, if confinement to segregation continues beyond a ten (10) day period, a new form will be prepared and the completed form forwarded to central file. Date and time of release will be recorded on the final form.

7. Additional comments may be noted on the reverse of the form and in each case, must be dated and include the signature and title of the person making the comment.

12. *Forms:*

a. Notice of Institute Discipline Committee Hearing (BP-IS-114), Locally Reproduced,

b. Inmate Rights at Institution Discipline Committee Hearing (BP-IS-113), Locally Reproduced,

c. Special Housing Record Sheet (BP-IS-111), Locally Reproduced. See Policy Statement 20,001.1B, Note: Title change must be entered manually on existing stock of forms. New forms will include these changes,

d. Incident Report (BP-IS-83A), Secured through regular FPI procurement sources, Note: See Policy Statement 7400.5C, Page 6 for change to Item 254, and addition of Item 257 which must be entered manually on existing stocks of forms. New forms will include these changes, and

e. Institution Discipline Committee Report (BP-IS-115), Locally Reproduced.

/s/ _____

NORMAN A. CARLSON
Director, Bureau of Prisons

U.S. DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

INCIDENT REPORT

1. NAME OF INSTITUTION
USP—Terre Haute, Indiana

PART I—INCIDENT REPORT

2. NAME OF INMATE
SAXNER, David

3. REGISTER NUMBER
28759-138

4. DATE OF INCIDENT
02-14-75

5. TIME
11:00 A.M.

6. PLACE OF INCIDENT
D-Unit

7. ASSIGNMENT
Unit Janitor

8. QUARTERS
D-Unit

9. INCIDENT
ENCOURAGING OTHERS TO REFUSE TO WORK.

10. CODE
255

11. DESCRIPTION OF INCIDENT
For the last few days this inmate has been encouraging a work stoppage by having others go out into the industries area to encourage this stoppage. This individual has also been observed moving about the entire institution and from information received, has been encouraging a work stoppage.

12. SIGNATURE OF REPORTING EMPLOYEE
/s/ G.D. Wilson

13. NAME AND TITLE (PRINTED)
G.D. WILSON, ADMINISTRATIVE SUPERVISOR

14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY
/s/ (Illegible)

15. DATE INCIDENT REPORT DELIVERED
2-15-75

16. TIME INCIDENT REPORT DELIVERED
10:00 a.m.

PART II—COMMITTEE ACTION

17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT

18. IT IS THE FINDING OF THE COMMITTEE THAT: ("X" APPLICABLE BOX)
☐ YOU COMMITTED THE PROHIBITED ACT AS CHARGED.
☐ YOU COMMITTED THE FOLLOWING PROHIBITED ACT:
_____
☐ YOU DID NOT COMMIT A PROHIBITED ACT

19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION

20. COMMITTEE ACTION
Refer to Inmate Discipline Committee.
/s/ D. P. Orr, CS.

21. DATE OF ACTION

PART III—INVESTIGATION

22. DATE
2/15/75

23. INMATE STATEMENT AND ATTITUDE
Inmate stated that this charge was totally absurd and that he was categorically innocent. He stated that he was charged with this because he refused to go to the Farm Camp. He said he had nothing else to say. His attitude was fair during the interview.

24. OTHER FACTS ABOUT THE INCIDENT
Considering the various items picked up from this man's cell, I would say there is little doubt about his activities.

25. INVESTIGATOR'S COMMENTS AND CONCLUSIONS
Guilty as charged. A definite ringleader in the activity charged.

26. ACTION TAKEN
Refer to Seniro [sic] Administrative Lieutenant D. P. Orr.
/s/ (illegible)
Correctional Supervisor

U.S. DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

INCIDENT REPORT

1. NAME OF INSTITUTION
USP—Terre Haute, Indiana

PART I—INCIDENT REPORT

2. NAME OF INMATE
CAIN, Alfred Michael

3. REGISTER NUMBER
illegible

4. DATE OF INCIDENT
2-14-75

5. TIME
11:00 A.M.

6. PLACE OF INCIDENT
E-Unit

7. ASSIGNMENT
Paint Shop

8. QUARTERS
E-Unit

9. INCIDENT
ENCOURAGING OTHERS TO REFUSE TO WORK.

10. CODE
255

11. DESCRIPTION OF INCIDENT
For the last few days this inmate has been encouraging a work stoppage by having others go out into the industries area to encourage this stoppage. This individual has also been observed moving about the entire institution and from information received, has been encouraging a work stoppage.

12. SIGNATURE OF REPORTING EMPL0YEE
/s/ G.D. Wilson

13. NAME AND TITLE (PRINTED)
G.D. WILSON, ADMINISTRATIVE SUPERVISOR

14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY

15. DATE INCIDENT REPORT DELIVERED
2-15-75

16. TIME INCIDENT REPORTED
10:00 a.m.

PART II—COMMITTEE ACTION

17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT

18. IT IS THE FINDING OF THE COMMITTEE THAT: ("X" APPLICABLE BOX)

☐ YOU COMMITTED THE PROHIBITED ACT AS CHARGED

☐ YOU COMMITTED THE FOLLOWING PROHIBITED ACT:

_____

☐ YOU DID NOT COMMIT A PROHIBITED ACT

19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION

20. COMMITTEE ACTION
Refer to Inmate Discipline Committee.

/s/ D. P. Orr, CS.

21. DATE OF ACTION

UNITED STATES PENITENTIARY
TERRE HAUTE, INDIANA
Form B, 7400.5C-TH, 10-04-74

INMATE RIGHTS AT INSTITUTION DISCIPLINE COMMITTEE HEARING

As an inmate charged with a violation of institution rules or regulations referred to the Institution Discipline Committee for disposition, you have the following rights:

1. The right to have a written copy of the charge(s) against you at least 24 hours prior to appearing before the Institution Discipline Committee;

2. The right to have a full-time member of the staff who is resonably available to represent you before the Institution Discipline Committee;

3. The right to call witnesses and present documentary evidence in your behalf, provided institutional safety would not be jeopardized;

4. The right to be present throughout the Institution Discipline Committee hearing except during Committee deliberations and except where institutional safety would be jeopardized;

5. The right to be advised of the Institution Discipline Committee's decision, the facts supporting the Committee's decision, except where institutional safety would be jeopardized, and the Committee's disposition in writing; and,

6. The right to appeal the decision of the Institution Discipline Committee by means of the Administrative Remedy Procedure to the Chief Executive Officer (Warden) within 30 days of notice of the Committee's decision and disposition.

I hereby acknowledge that I have been advised of the above rights afforded me at an Institution Discipline Committee hearing.

/s/ _____
DAVID SAXNER
28759-117
February 15, 1975

(Where an inmate has been advised of his rights afforded at an institution Discipline Committee hearing, but refuses to sign the acknowledgement, the following should be completed.)

I have personally advised _____
(inmate's name and register no.)
of the above rights afforded him at an Institution Discipline Committee hearing; however, he has refused to sign the acknowledgement.

Signed: _____
(Employee's Typed name)

_____
(Date)

UNITED STATES PENITENTIARY
TERRE HAUTE, INDIANA

INSTITUTION DISCIPLINE COMMITTEE REPORT

FORM D, 7400.5C-TH, 10-04-74
DATE: February 21, 1975
TIME: 9:35 am to 10:40 am

NAME OF INMATE: David SAXNER
REG. NO.: 28759 c 117

The inmate has been advised of his rights before this committee. [X] A copy of the advisement of rights form is attached.

This hearing is held to consider the Incident Report(s) dated:
2-14-75

The following persons appeared before the Committee:
Mr. Fred Smith

Summary of statements made and information presented to the Committee:
Inmate admits the charge(s): [ ] Yes [X] No.

The Incident Report was read to Saxner and he was again advised of his Rights, which he states he understands. Saxner requested Mr. Class as a Staff representative at first but later requested to have Mr. Fred Smith as a Staff representative. Saxner also requested inmate witnesses in his behalf.

Mr. Cleavinger asked Saxner what he can tell the committee about the incident. Saxner stated that first, he is Not Guilty, and was categorically innocent; and besides the depositions submitted and evidence, Saxner stated he is willing to take a lie detector test, at his own cost, to prove the charges brought against him are totally untrue. Mr. Cleavinger informed Saxner there will be no lie detector test.

The Committ [sic] finds that
[ ] The act was committed as charged
[ ] The following act was committed:
255 701 208
[ ] No prohibited act was committed.

(If this is the finding, this report and all related reports will be destroyed.)

Action Taken:
Administrative Detention. Discontinue Meritorious Pay and Good Time. Recommend Transfer to another Institution. The I.D.C. has Forfeited 84 Days of Saxner's Good Time
Review for Record February 25, 1975
Formal Review March 3, 1975

Reason for Action Taken:
Saxner was found Guilty of Encouraging Others to Refuse to work from the information received from Staff and the written and investigative reports. He was also found Guilty of Unauthorized Use of Mail (701) (sending manuscripts out) and Possession of Contraband (208) (article from Prisoners Union, Leavenworth Penitentiary). It is felt the Education Supervisor, or his representative should talk with Saxner regardng manuscripts and the regulations.

[ ] The inmate has been advised of the findings and orders of this committee.
[ ] The inmate has been advised of his right to appeal this action within 30 days, to the Chief Executive Officer.
[ ] A copy of this report has been given to the inmate.

T. Cleavinger, Chairman
/s/ M. Marcadis Member
/s/ T.P. Lockett Member

Saxner stated that he would like for the record to state, at least, that he requested it to prove he is Not Guilty. He also wanted to state that in April of this year he will go before the U.S. Board of Parole for parole consideration and feels he is an excellent candidate for parole. Saxner states he has received two minor Incident Reports and one of them usually isn't given to inmates while in the Prison System. Saxnar states he has Minimum Custody and MGT and had MSA until he went out on writ. Saxner stated he also has a cross section of letters going to the Parole Board offering him jobs, letters from university professors, etc., to show his chances of parole are extremely good. Saxner stated he thinks if he had all those things going, plus being a first offender, it would be sort of insane for him to jeopardize all of his chances before he goes to the Board. Mr. Lockett informed Saxner that many people who are to go soon do things to delay their leaving. Saxner stated he would like to have the record reflect he has all these things and would like them for evidence. Saxner stated he also understands he is not allowed to have repetitive witnesses; but the way the charges are written up the only way he can prove he is Not Guilty is to have any member of the panel ask people if he encouraged people not to work, etc.—and that would be another way to establish his innocence.

Mr. Lockett informed Saxner it would be very foolish to ask inmates if he encouraged a work stoppage, and he (Saxner) understands that—they wouldn't say "Yes" and Saxner knows that. Saxner stated that no prisoner would be jeopardized and it would also clear him. Saxner stated he would like to have the record reflect he asked to have this happen. Mr. Lockett informed Saxner again it would be impossible to put a person in that position.

Saxner stated he has four Depositions to submit from inmates he has some kind of a relationship with in population (attached) and they are from:

James McShane Earl Williams
Paul Bryant John Campbell

Saxner stated that these Depositions prove various things that during the week when he was allegedly sending respresentatives around the institution to encourage others

to not work and he was charged with trying to organize the stoppage—these witnesses admit he has never attempted to organize anything and can say what his involvement was.

Mr. Lockett asked Saxner if he says he never attempted to try to organize any type of Union or work stoppage, or anything like that, and he said "That is right."

Mr. Marcadis informed Saxner that all the Depositions do is give the committee one person's opinion but cannot make a blanket statement—but only from what they know. The four Depositions in question were read to the Committee.

Saxner stated that his feelings are that he has established, through the Depositions, that during the week when he allegedly sent representatives throughout the institution to encourage other people not to work—they didn't hear about the strike or see him encouraging or attempting to organize a strike. Saxner feels he also proved he is a serious-minded artist and his activities throughout the institution are related to studies, etc.; and persons close to him knew nothing of the work strike and didn't hear of the alleged work strike. Saxner stated that from the evidence he knows the committee has from this particular incident, that the evidence confiscated from his property is unrelated to the charge but within his constitutional rights and Bureau of Prisons and Terre Haute statement guidelines. He feels they are his rights of freedom of expression to submit sealed letters through the P.M.B. mail box and he claims a letter of his was confiscated to a news representative, that can be mailed, regarding mistreatment within the prison hospital.

Mr. Lockett asked Saxner if he works in the hospital. Saxner stated he does not. Saxner claims both of the things are P.M.B. literature that should go out of the institution unread, and is privileged reading material. Saxner stated he also believed there is a letter to an attorney being used as evidence that does not relate to the matter. Saxner claims Supreme Court rulings state that under no circumstances will the Administration read attorney-client mail in or out of the institution; and from his knowledge the evidence has nothing to do relating to the charges but he feels he is being persecuted and will be persecuted for something entirely unrelated to the charges.

Mr. Lockett asked Saxner if he is saying that at no time did he support, or attempt to organize a Union, or pass out pamphlets to other inmates advocating this. Saxner stated the only paper he passed to other prisoners in this institution was he gave to John Mayberry a copy of an article and he is a friend of his in the institution.Mr. Lockett informed Saxner he told the committee it is privileged mail but he passed it to other people and Saxner said he did if he wanted to show a friend an article. Mr. Lockett asked Saxner if he feels there are exceptions to this for him and Saxner stated "Privileged mails is in reference to prison officials and myself." Mr. Lockett informed Saxner that not only did Mayberry have a copy of the item but Cain stated he had a copy of something of Saxner's. Saxner claimed it was a copy of a letter to an attorney.

Mr. Marcadis showed Saxner an article and asked him if he wrote it. Saxner stated it seems to be a rough draft of something he did write. When Marcadis asked him about another item, Saxner said "That is my writing." Mr. Marcadis said "How about this, which is a cleaned up version of the first thing?" Saxner stated it is a shorter version of something else, which is also his. Mr. Marcadis showed Saxner another item and Saxner said it isn't his and it isn't his handwriting. Mr. Marcadis informed Saxner all the articles were found in his personal property. Saxner said one item is a carbon copy of something that went to various newspapers for publication, through the P.M.B. When Mr. Marcadis asked Saxner if he had authorization for it, as the statements says, Saxner admitted he didn't. Mr. Marcadis asked Saxner about still another item and Saxner stated it was a rough draft of a smaller item, and is his. When asked about another one, Saxner stated they are notes for an article. Mr. Marcadis informed Saxner that he mentions Staff members and inmates in the manuscripts going out and Saxner asked if he meant inside the articles. Mr. Marcadis said "Yes—did you have the inmate's permission to mention his name?" Saxner said "No." Mr. Marcadis asked Saxner if he had any of the Staff member's permission to mention their name and Saxner said "No."

Mr. Marcadis informed Saxner he had no specific permit and each manuscript has to be individually cleared and informed Saxner he has no right, under P.M.B., to have published manuscripts to go out unless specifically cleared. Saxner was told he didn't get authorization and did mention Staff members and didn't get their authorization, or inmates' families—living or dead—to mention their names. When asked where he works, Saxner said as a unit janitor. Mr. Marcadis asked Saxner if he ever wanders around the shops or Industries areas, and he said the only time he has been in Industries was when he was arranging for a band to come in.

Mr. Smith stated that one thing he didn't mention before was Saxner said to him the reason he wanted Johnny Campbell to make a statement is that Campbell is known as a kind of shady person and if anything was going on, Campbell would be involved in it. Mr. Smith said Saxner also stated that everything he has done was for outside the institution and not for within the institution—in other words, he wasn't doing this and mass producing and handing it to inmates. Saxner stated that if the committee would note, the way the articles are set up, obviously they were not intended for prisoners and wants to have the record to reflect that the articles are something that is set up for people on the streets and not to be passed around the institution to incite others to create disturbances.

Mr. Marcadis asked Saxner if he permitted other inmates to read the articles and he said he gave Mayberry one, but he never read it; and the carbons were to be mailed out but he never mailed them. When asked where it was published, Saxner said in a few places in New York.

Mr. Lockett asked if the letters were type [sic] and where he uses the typewriter. Saxner said on that particular one, he had a typewriter in his cell. Mr. Lockett asked Saxner who gave him permission. He said it was for a manuscript, from Mr. Veltri—the legal library man. Mr. Marcadis noted the comments about inmate Lowe and asked Saxner where he got the information at 5:30 in the morning. Saxner said he wasn't out of his cell but doesn't think he is at liberty to shed light on his source of information. Mr. Marcadis said Saxner made statements about his medical evaluation, or lack of it,

and asked Saxner if that was done through his medical wisdom. Saxner said information flowed about the population that was checked out with sources on the streets.

Mr. Lockett asked Saxner if he goes from various inmates to others and makes a survey. Saxner stated when something happens inside an institution setting there will always be rumors and feed back, and the information he picks up from word of mouth he checks with people on the streets. Mr. Lockett told Saxner he approaches people and attempted to get information and asked Saxner why they approach. He stated they approach him many times as people think he is the jailhouse lawyer type. He states the image has always stuck with him and when people have complaints they sometimes come to him.

Mr. Lockett asked were the grievances for medical problems, etc., presented. Saxner said they weren't but he plans to write a book one day. Mr. Marcadis asked if he planned to take them before the administration sooner or later and Saxner said "No."

Mr. Marcadis said "You mentioned, Fred, about him wanting a Deposition from Campbell because if anything was going to happen, he would be in on it." Mr. Smith replied that he is the type of person that if anything was going to happen, he would know about it and the only reason Campbell was picked was he associates with him and he is known in the institution to have been involved in a lot of things; and if anything is going to happen, he is usually involved in it.

Mr. Marcadis asked Saxner about the literature he glanced at and agreed it was his handwriting, that if he thinks that if it was found in the hands of inmates less stable than Saxner, it could be considered inflammatory. Saxner stated "No," and that usually something really has to happen to motivate them to make any type of move. He stated that he has seen incidents within the penitentiary that nothing moved the inmates here to do anything; and the average prisoner here is not going to pick something up and be moved by it. Saxner claimed when he gave Mayberry a copy of the article, he stated he never read it—and that is generally what happens. Mr. Marcadis said "Not read it, but look at it and take things out of context." Saxner felt he did not

consider it inflammatory as prisoners aren't moved by typewritten things—written things don't move people but something like a death and the fact that 800 or 900 people didn't work—that could move people.

Mr. Lockett informed Saxner that he doesn't believe he (Saxner) or himself have the capabilities to say whether a letter will have an inflammatory effect—the letter has been written and has this type of connotation and will have to be taken that it can have an inflammatory effect.

Saxner stated that if he wanted to write somthing that would be considered inflammatory, he would put something basic to the prisoners to incite them to make a move and be as brief and concise as he can be. He stated that something that is 3 or 4 lines they will read, but if it is several pages long they won't look at it. Saxner stated that he would like to mention that, as charged, the evidence he has seen, in his eyes, does not support the allegations from Mr. Wilson's shot.

Saxner used the P.M.B., not for what it was intended, and violated policy statements on the use of typewriters and manuscripts. Saxner verified the confiscated materials were his.

UNITED STATES PENITENTIARY
TERRE HAUTE, INDIANA

INSTITUTION DISCIPLINE COMMITTEE REPORT

FORM D, 7400.5C-TH, 10-04-74
DATE: February 21, 1975
TIME: 8:50 am to 9:35 am

NAME OF INMATE: Alfred M. CAIN
REG. NO.: 29847 c 138

The inmate has been advised of his rights before this committee. [ ] A copy of the advisement of rights form is attached.

This hearing is held to consider the Incident Report(s) dated:
2-14-75

The following persons appeared before the Committee:
Mr. J. R. Alvarado

Summary of statements made and information presented to the Committee:

Inmate admits the charge(s): [ ] Yes [ ] No.

The Incident Report was read to Cain and he was again advised of his Rights, which he states he understands. Cain requested to have Mr. C. Nave as a Staff representative, but he was not available. Cain then requested to have Mr. J.R. Alvarado as a Staff representative. Cain did not wish to have inmate witnesses in his behalf and he admitted refusing to sign any of the documents.

Mr. Cleavinger asked Cain what he can tell the committee about the report. He stated he told Mr. Jean, the Investigating Officer, he didn't engage in any of these activities and he didn't do any of this. Mr. Cleavinger asked Cain what he did.

The Committ [sic] finds that:
[ ] The act was committed as charged
[ ] The following act was committed:
255 208
[ ] No prohibited act was committed.

(If this is the finding, this report and all related reports will be destroyed.)

Action Taken:
Administrative Detention.
Recommend Transfer to another Institution.
The I.D.C. has Forfeited 96 Days of Cain's Good Time
Review for Record February 26, 1975
Formal Review March 3, 1975

Reason for Action Taken:

Cain was found Guilty of Encouraging Others to Refuse to Work (255) and also Charge 208, based on the fact he was observed moving about the institution and encouraging other inmates to participate in a work stoppage and also having inflammatory material, which was supporting disruptive conduct in the institution. He is being placed in Administrative Detention as it is felt he is a threat to the security of the institution and his presence on the compound would be a continued threat to the population.

[ ] The inmate has been advised of the findings and orders of this committee.
[ ] The inmate has been advised of his right to appeal this action within 30 days, to the Chief Executive Officer.
[ ] A copy of this report has been given to the inmate.

T. Cleavinger, Chairman
/s/ M. Marcadis, Member
/s/ T.R. Lockett, Member

Cain claims he is supposed to be going for Parole in June and expects to make it and hasn't received an Incident Report for more than a year. He claims he didn't engage in any of this activity mentioned and wants to take a lie detector test, which he will pay, to show he didn't commit any of the activities. Cain stated he would like to know who said he was encouraging them not work, etc., and hopes this will be one of the ways this issue could be resolved as none of it is true. Cain stated it would have been foolish for him to encourage a work stoppage as he is getting ready for Parole. Cain was advised the committee is not going to give him a lie detector test.

Mr. Lockett asked Cain if he was trying to talk up anything or form a Union or organization. Cain said "No." Mr. Lockett asked Cain if he is not in favor of a Union and Cain said he wasn't trying to form one but feels prisoners would be in a better position if there was one in here. Mr. Lockett asked if he meant they would run the place then. Cain stated he didn't say that—he didn't try to organize a Union or organization for a work stoppage, and never encouraged anybody to not go to work; and for him to get involved in what he is alleged, would be foolish.

Mr. Marcadis asked Cain if he ever passed out any of the literature that was found in his possessions, or give to anyone else, and Cain said "No." When asked why he had it, Cain stated it was given to him by someone he had a good relationship with.

Mr. Lockett asked Cain who gave it to him and he said "a man who is not in the institution any more." He said his name is "Imami" (?).

Mr. Marcadis asked Cain why Mr. Wilson said he has been observed in other parts of the institution other than where he is assigned. Cain said that is not true and doesn't know why it was said. Mr. Marcadis asked Cain if he has never been in areas other than where he is assigned and he said "No, and never told anyone else in Industries not to go to work." Mr. Marcadis informed Cain that he said the things in his locker were dated one or two years ago, and showed him an item dated 1974. Cain asked what it said as it wasn't his and he didn't write it. Mr. Marcadis informed Cain that no one said he wrote it but it was found in his property. Cain

was asked who did write it. Cain stated his name is "David Saxner" on it. Cain was asked if he ever read it before and he said he has never seen it before.

Mr. Cleavinger informed Cain it looks like he is pretty well involved in trying to encourage a work stoppage. Cain stated again he would like to take a lie detector test as it would show he wasn't involved, and doesn't even know who said they saw him do it.

Mr. Lockett informed Cain that some of the officers have seen him out of bounds and in areas he is not supposed to be. Also, he has materials in his area indicating support and recommendation for a Union, and supporting a work stopage. Cain stated he doesn't have any material indicating he was trying to organize a Union or support a work stoppage, and he tried to discourage the last one we had.

Mr. Marcadis asked Cain if he said he had nothing in his possession that was encouraging dissension or unrest, or an attitude to encourage people to get up in arms in violation of rules. Cain stated he said he didn't have anything in his possession that indicated he was trying to start a work stoppage or not go to work, or form a Union. Mr. Marcadis again informed Cain he didn't say he wrote the item but had it in his property.

Mr. Alvarado stated Cain told him he is Not Guilty of these charges and is willing to take a lie detector test and pay out of his commissary funds. Mr. Alvarado states he doesn't know Cain too well but never had any trouble with him, but does know him. Mr. Alvarado states Cain told him he wasn't Guilty and wants this in his record that he did request a lie detector. Cain stated he has been trying to do whatever he has to do to get out of this institution, and expected to make Parole. He claims he is going to Vincennes University yet. Cain stated if the committee is trying to find out the truth, he doesn't know why he can't take a lie detector test, and would be willing to sign any waivers and pay for it. Also, he would like to have the opportunity to ask whoever said he did this, and would like to establish what he is saying is true.

Cain identified David Saxner, 28759-117, as the writer of the letter of January 9, 1974, to Arpiar Saunders, Attorney, National Prison Project, Washington, D.C.

FEDERAL BUREAU OF PRISONS
REQUEST FOR ADMINISTRATIVE REMEDY

To x Warden of Institution
Director, Bureau of Prisons
From: Saxner, David L. 28759-117 USP TERRE HAUTE

Part A—INMATE REQUEST

On February 14, 1975, I was placed in Administrative Detention and charged with "encouraging others to refuse to work." One week later, on the 21st of February, I was convicted of the said charge and also charged and convicted with two more offenses; possession of contraband (grievances from Leavenworth) and misuse of the mail (sending out manuscripts).

When I appeared before the IDC I told them I was innocent of the charge that I was before them for. I offered to take a lie detector test, at my own cost, to prove that I was in fact innocent. This request was denied and both the request and the denial are recorded in the IDC transcript.

I tried to explain to the IDC that I was going up for parole in April and that I wouldn't do anything to hinder my chances for making parole. I felt I was in excellent position to make parole. I brought a number of letters from prospective employers and others who could offer assistance if I were released.

I explained to the IDC I had minimum custody, was receiving Meritorious Good Time, had only two minor incident reports in the four years I've been in prison, that I have been in prison for four years on a marijuana-related "crime," and that I had scored nine out of a possible eleven points on the Board's Salient Factor Sheet (which means under my "high" category I'm expected to serve 16-20 months in prison, and at this time I have three times that much served!). I asked the IDC to consider all this.

However, the IDC wasn't at all concerned with any of this. They were convinced that I was guilty as charged. The charge states: "For the last few days this inmate has been encouraging a work stoppage by having others go out into the industries area to encourage this work stoppage. This individual has also been observed moving about the entire institution and from information received, has been encouraging a work stoppage."

Yet, the IDC failed to present *any* evidence to support their allegations. The only "evidence" against me was an article I had written about the hospital conditions entitled "Prisoners At Terre Haute Seek An Investigation"; a four page letter to a media representative dealing with medical "treatment"; some notes I had hoped to use for a future book dealing with the prison industries; a list of grievances written and signed by the Federal Prisoners' Coalition at Leavenworth; and carbon copies and rough drafts of the previously mentioned article. I admitted that all of the foregoing were indeed mine, save the article from Leavenworth. But the fact of the matter remains that none of this is evidence to support the charges I'm currently in segregation for.

I submitted four depositions to the IDC. They're a part of the record so I will not bother detailing them. You should read them yourself. They are written by four prisoners whom I was in constant touch with during the week when I was allegedly organizing this fantasy strike. Each deposition is quite explicit, and together they show that during the week in question, i.e., from February 10-14, that I was concentrating my efforts on setting up a February 14th Creative Arts Workshop show; that people who were close to me did not ever hear me mention anything about organizing a work stoppage; that if I had been organizing a work stoppage they would have been aware of it; and that it would have been highly improbable for me to have been organizing a work stoppage without their knowledge.

But the IDC seemed to disregard all of this. Mr. Smith, my representative, was amazed to see me convicted from the evidence presented by the IDC. Ask him if he thinks I was guilty. He knows that I wasn't guilty as charged. He knows that I was only found guilty because I had written an article exposing the hospital conditions. In other words, this is some retribution for something I did that was within the Bureau of Prisons' guidelines, within Terre Haute policy statement guidelines and surely within the guidelines of the First Amendment of the United States Constitution. I could cite

numerous court decisions to support my claims, but I understand that this remedy doesn't deal with legalities.

When the IDC was deliberating Mr. Smith mentioned to the members that he felt they should either reword the charge, give me new charges or do something to make the charges coincide with the evidence. The IDC then gave me two new charges; the misuse of the mail and possession of contraband charges mentioned on page one.

The charges are wholly nonsensical and are also inconsistent with the Bureau policy statement on Inmate Discipline dated October 4, 1974 and coded 7400.5C. The fact that the charges were lodged against me while the IDC was deliberating is in violation to the aforementioned policy statement. May I direct your attention to page 9, section 8(a) of that statement which quite clearly states "Each inmate charged with violating an institution rule or regulation shall be given a written copy of the charge or charges against him within 24 hours of the infraction." The section just cited was in reference to minor violations, which I assume the charges were since they weren't presented to me until *after* the IDC commenced its deliberations. If this is considered a major offense then let me refer you to page 10, section 9(c)(1) concerning *Procedural Requirements:* To wit, "an inmate will be given advance written notice of the charge(s) against him no less than 24 hours before the Institution Discipline Committee. An inmate may waive in writing this 24 hour notice requirement." I did not waive this notice.

Also, you'll note that Attachment B in the aforementioned policy statement touches on the matter of advanced written notice of charges. The FIRST RIGHT on that page reads "The *right* to have a written copy of the charge(s) against you *at least 24 hours prior* to appearing before the Institution Discipline Committee." (Emphasis added.)

In reference to the misuse of mail charge, i.e. sending out manuscripts, let me say this. I wrote the National Prison Project to procure the copies of the latest policy statements that I needed to prepare this appeal; I know that it's impossible to get these policy statements inside the general population, yet [sic] alone in segregation (this too is a violation of

Bureau policy statements that say prisoners both in segregation and in the general population should have access to full copies of policy statements). Anyway, I've thoroughly covered policy statement 1229.1 dated February 11, 1972, entitled "Inmate Correspondence With Representatives Of The Press And News Media." The purpose of this statement, and I quote in pertinent part, is "... to protect First Amendment rights of inmates, within the constraints of sound institutional management." There is nothing in this policy statement that says I have to get an outgoing manuscript approved before I send it out. To the contrary, the intent of this policy statement and the Prisoners' Mail Box is to afford the prisoner a chance to speak up against his conditions, keepers or treatment without having to foreclose his/her name or without putting him/herself in jeopardy. So the charge against me for misuse of the mail is totally without merit.

There is more. At the IDC I raised the issue of "privileged correspondence." I feel that anything that is for the Prisoners' Mail Box is privileged since the sole expressed intent of the PMB is to protect the writer's future within the federal prison system. One of the pieces of evidence against me was a carbon of a letter I had mailed to John Antonides, editor of the local Bloomington paper. This is correspondence with a bonafide news representative, and such letters are consistent to the policy statement mentioned previously on this subject. I am now being persecuted, in part, for writing this man.

There is more. Alfred Cain Jr. was locked up partially because he had in his cell a copy of a letter that I had written to an attorney. Surely I need not tell you that attorney-client mail is privileged. I know you know there are many court decisions, including from the Supreme Court, that prohibit prison officials from reading attorney-client mail. At this point both Cain and I are being persecuted for this letter's content. I raised the claim of attorney-client confidentiality before the IDC. They ignored me, just as they ignored me when I mentioned the privilege mail between prisoners and newspapers. Are these policy statements written to deceive the public about the lawlessness

that pervades these prisons, or are they written to be enforced?

There is more. John Mayberry got locked up because there was a copy of an article that I wrote in his cell. After getting locked up he was convicted of the same charges as myself, forfeited his good days and was then sent off to Leavenworth. All this because he had an article I wrote, an article I told the IDC I wrote.

There is more. As a result of my IDC hearing on February 21, 1975, I lost 84 good days, was recommended for transfer, lost my MGT and was sent to "Administrative Detention." The regular Administrative Detention unit, as you know, is L Unit. I was told there were no cells in L Unit, that Cain had gotten the last one and that I was going to G Block. But I was assured that I was going to be on Administrative Detention status in G Block, that I wouldn't be left in the normal squalor of this infamous housing unit. However, when I got there I found out different. I was given some of my personal belongings. But, I was placed in a cell with no light. The light on the tier was out and it took me four and a half days of complaining to get it fixed. I was in total darkness for four and a half days; ask Father Bill if you don't believe me. Moreover, three lieutenants refused to move me into a cell where there was light—that was when there were only three prisoners in the entire cell block and plenty of open cells! Besides the lighting situation (or lack of it I should say), there was no ventilation in my cell, I got no fresh air or exercise, I had no spring bed, pillow or blanket, no commissary privileges, no newspapers or books were allowed to me, no law library, toilet paper was "distributed" by the handful, no toothbrushes, no phone calls, pencils, paper and envelopes were rationed, no brooms, toilet brush or cleanser to keep our cells sanitary (they did come around once in a week), and numerous other things inconsistant with pages 16-19 of policy statement 7400.5C.

There is more. While I was in G Block I was refused dental care. I was taken to the dentist's office to have my teeth cleaned, but when I got there I was told I couldn't have my teeth cleaned unless I was in the general population. When I told the dentist that I wasn't getting back in the population,

he told me that that's "a tough break." This, too, is in violation of 7400.5C. See page 16 of that policy statement part (c) which states "... To the extent possible, inmates housed in Administrative Detention will be afforded the same general privileges given to inmates in general population as is consistent with existing resources available and the security needs of the unit."

There is more. Also while I was in G Block I was denied a visit with Rev. Robert Horton. Rev. Horton is an approved visitor to any federal prisoner, at least that's what Mr. Carlson has said. I have seen him in the past, but while I was in G Block they refused to take me to the visiting room to see him.

There is more. This, too, concerns G Block. On the night of February 22, 1975, I saw eight guards beat Russel Smith. Smith was half unconscious and laying on the floor face down when Lieutenant Hicks started to violently kick him in the face. The lieutenant was kicking him so violently that his subordinates, namely John Wright, were physically pulling him out of G Block. Smith was then stripped and placed in a strip cell in the rear of G Block. He was beat again then, this time in the nude. I saw all of this while holding a mirror out through my bars. I might add that strip cells, according to PS 7400.5C pg. 18(c)(1), are only allowed to be used in the hospital. The conditions in G Block do not fall in line with the Bureau's thinking of "Administrative Detention." It is cruel and unhuman and evidently was created by some hungry sadist. I mention all these different things about G Block because they're all relevant. I had to live in there and see that kind of misery. And all this because I exercised my First Amendment "right"!

Now I have received a progress report from my caseworker, Mr. Rollins, and he has recommended to the parole board that I be continued to the expiration of my sentence. I cannot make parole unless these good days are reinstated first. And unless you reinstate them before my parole hearing in April, I will have to spend 15 months more in these overbearing, oppressive conditions.

For all of the reasons above, for the lack of evidence presented against me before the IDC, for the violations of my

prison and constitutional rights and for the treatment I've been subjected to, I beseach you to overturn the IDC's decision, reinstate my good days, discontinue my recommendation for transfer, place me back in the prison population, restore my MGT and expunge from my record, and from the records of the Parole Board, Bureau of Prisons, and any other government agency working in concert with them, any report, memo or written statement relating to this incident report.

/S/ David Saxner 28759-117
Signature of Requestor

MARCH, 17, 1975

Part B—RESPONSE

As discussed with you recently by the Institutional Disciplinary Committee, your record will not be expunged since the committee found you guilty of the charges. However, as you recall, the committee on the recommendation of this office and for reasons explained to you, have restored or in the process of restoring your good time, and have also returned you to the population with the notation that the incident not reflect unfavorably upon your consideration for parole.

/S/ T.P. Lockett
Department Head or Representative

/S/ [illegible]
Warden, Director or Associate

3-21-75

FEDERAL BUREAU OF PRISONS
REQUEST FOR ADMINISTRATIVE REMEDY

To: __x__ Warden of Institution
_____ Regional Director, Bureau of Prisons

From: Cain, Alfred Jr., 29347-138

Part A—INMATE REQUEST

On February 14, 1975, I was placed in Administrative Detention and charged with "encouraging others to refuse to work." One week later, on the 21st of February, I was convicted of the said charge and also charged and convicted of a second offense, possession of contraband.

When I appeared before the IDC I told them I was innocent of the charge against me. I offered to take a lie detector test, at my own expense, to prove that I was in fact innocent. This request was denied, and the request and the denial are recorded in the IDC transcript.

I tried to explain to the IDC that I was going up for parole in June of this year and would not do anything to hinder my chances. I felt that I was in a good position for gaining my release. My last incident report was more than a year ago, and I have been working regularly and going to college. Moreover, I have served three years on a five year sentence.

The IDC was not too concerned with my institution record. They were convinced that I was guilty of the charge. The charge states: "For the last few days this inmate has been encouraging a work stoppage by having others go out into the industries area to encourage this work stoppage. This individual has also been observed moving about the entire institution and from information received, has been encouraging a work stoppage."

Yet, the IDC failed to present any evidence to support their allegations. The only "evidence" against me was a union outline dated May 1973 and a letter written to an attorney by David Saxner. The latter was found in my cell, but as you can easily see by looking at the letter it does not belong to me. David Saxner has told the IDC that the letter did in fact belong to him. The letter deals with the conditions in the hospital, and I was afforded the opportunity to read it at my IDC hearing. That is the extent of the "evidence" which convicted me on the description of the incident mentioned above.

In addition, while I was at the IDC they charged me and convicted me of possession of contraband. The fact that this charge was lodged against me a week after I was locked up and while I was before the IDC, is in violation with the Bureau of Prisons' Policy Statement 7400.5c on Inmate Discipline dated October 4, 1974. Page 9, Section 8(a) states very explicitly that "Each inmate charged with violating an institution rule or regulation shall be given a written copy of the charge or charges against him within 24 hours of the infraction." The section just cited is in reference to minor violations, which I assume the charge was since it wasn't presented to me until *after* the IDC commenced its deliberations. If it was/is considered a major violation, then let me refer you to page 10, Section 9(c)(1) concerning *Procedural Requirements:* To wit, "an inmate will be given advance written notice of the charge(s) against him no less than 24 hours before his appearance before the Institution Discipline Committee. An inmate may waive in writing this 24 hour notice requirement." I did not waive this notice.

Also, you'll note that Attachment B in the aforementioned policy statement touches on the matter of advanced written notice of charges. The *FIRST RIGHT* on that page reads "The *right* to have a written notice of the charge(s) against you *at least 24 hours prior* to appearing before the Institution Discipline Committee." (Emphasis added)

As a result of the IDC hearing of February 21, 1975, I had 96 good days taken from me; I was recommended for transfer; and I was placed back in Administrative Detention. The parole board prohibits a prisoner parole if that person has forfeited good days; it takes six months good behavior to get those days reinstated. Therefore, as a result of this incident I will undoubtedly be denied parole.

For the two basic reasons outlined above, i.e., (1) the fact that no evidence was presented to substantiate the IDC's claims that I was trying to encourage a work stoppage, and (2) the fact that I was not given written notices in advance for the possession of contraband charge, I hereby request that you overturn the IDC's decision, reinstate my good days, place me back in the general population and forget about the recommendation for transfer. I would also request that all reference to these charges be expunged from the records of this institution, the Parole Board, the Bureau of

Prisons and all other government agencies. This, too, would be consistant with the policy statement on Inmate Discipline.

/S/ Alfred Cain, Jr.
Signature of Requestor

March 12, 1975

Part B—RESPONSE

As discussed with you recently by the Institutional Disciplinary Committee, your record will not be expunged since the committee found you guilty of the charges. However, as you recall, the committee on the recommendation of this office and for reasons explained to you, have restored or in the process of restoring your good time, and have also returned you to the population with the notation that the incident report not reflect unfavorably upon your parole consideration.

/S/ T. P. Lockett
Department Head or Representative

/S/ [illegible]
Warden, Associate, or Regional Director

3-21-75

FIRST COPY; For offender's central file after completion.

Part C—RECEIPT

Return to: Cain, Alfred Jr., 29847-138, T.H.
I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:
To overturn IDC decision.

/S/ [illegible]
Recipient's Signature (Staff Member)

3/17/75

FEDERAL BUREAU OF PRISONS
REGIONAL APPEAL
RESPONSE FOR ADMINISTRATIVE REMEDY
REQUEST

To: Regional Director, Bureau of Prisons
From: Saxner, David L., 28759-117, Terre Haute Farm Camp

***Part A—REASON FOR APPEAL:**

Herewith is a copy of my BP-DIR-9 from requesting that the IDC's charges and conviction be overturned and expunged from my reports. The reasons for this request are detailed in the aforementioned form.

RECEIVED
Apr 16, 1975
Wardens Office
United States Penitentiary
Terre Haute, Indiana
/S/ David Saxner
Signature of Requestor

March 28, 1975

*The completed Form No. BP-DIR-9 must accompany this appeal.

Part B—RESPONSE

Your appeal has been reviewed. The staff at the U.S. Penitentiary at Terre Haute have advised that after subsequent review of your request the disciplinary report and the action by the I.D.C. on the incident and relevant material thereto has been expunged from your record.

Therefore, the relief you requested has been granted.

J. D. HENDERSON, Regional Director
Signature of Regional Director

04-11-75

THIRD COPY: Through warden to offender's institutional file after completion.

Part C—RECEIPT

Return to: Saxner, David L., 28759-117, Terre Haute Farm Camp

I acknowledge receipt this date of the above inmate's appeal from the response received from the following complaint:

[illegible] /S/ [illegible]
DATE

FEDERAL BUREAU OF PRISONS
REGIONAL APPEAL
RESPONSE FOR ADMINISTRATIVE REMEDY REQUEST

To: Regional Director, Bureau of Prisons
From: Saxner, David L., 28759-117, Terre Haute Farm Camp

***Part A—REASON FOR APPEAL:**

Herewith is a copy of my BP-DIR-9 from requesting that the IDC's charges and conviction be overturned and expunged from my records. The reasons for this request are detailed in the aforementioned form.

RECEIVED
Apr 16, 1975
Wardens Office
United States Penitentiary
Terre Haute, Indiana

/S/ _____
Signature of Requestor

March 28, 1975

*The completed form No. BP-DIR-9 must accompany this appeal.

Part B—RESPONSE

Your appeal has been reviewed. The staff at the U.S. Penitentiary at Terre Haute have advised that after subsequent review of your request the disciplinary report and the action by the I.D.C. on the incident and relevant material thereto has been expunged from your record.

Therefore, the relief you requested has been granted.

J. D. HENDERSON, Regional Director
Signature of Regional Director

04-11-75

THIRD COPY: Through warden of offender's institutional file after completion.

Part C—RECEIPT

Return to: Saxner, David L., 28759-117, Terre Haute Farm Camp

I acknowledge receipt this date of the above inmate's appeal from the response received from the following complaint:

[illegible] /S/ [illegible]
DATE Signature of Recipient of Regional Appeal

PRISONERS AT TERRE HAUTE SEEK AN INVESTIGATION

The United States Penitentiary at Terre Haute, Indiana is not too different from other prisons—most prisons are located in areas of the country that enhance the probability of strangling a prisoner's intercourse with any strata of society, including his/her family and friends. Other similarities include, but are not limited to, the pervasion of racism, terror, horror and administrative corruption.

Recent events here at Terre Haute will best exemplify what is going on in prisons across the nation. The situation here is *not* unique.

On January 6, 1975, at 6:22 a.m., William Lowe, a Black prisoner from Detroit, died in the prison hospital. The following day more than 900 prisoners—out of a total population of 1076—staged a work stoppage to peacefully protest the circumstances around the death. Moreover, prisoners sought to establish a Prisoners' Council, a liaison group that could deal with prisoners' grievances; and to establish better medical facilities and procedures within the prison hospital. We *need* a doctor here seven days a week, as well as a competent medical staff at night. We *need* free and timely access to the prison hospital. And we *need* a hospital here that is equip [sic] to handle the medical needs of a community comprised of 1100 men—or, if this is a financial hardship, then the prison should establish relations with a hospital in the city of Terre Haute that could treat the men who cannot be attended to here.

As a result of the work stoppage more than 70 prisoners were locked in segregation. The vast majority of these men have been released from segregation, but the "leaders" remain locked up awaiting their transfer to more repressive federal prisons across the country.

In the meantime the administration has yet to act on the grievances brought to their attention by the strike. In fact, the administration has yet to act on its own "concession" of better medical treatment from another work stoppage in October of 1972.

In weeks subsequent to the strike prisoners have been calling for a full scale investigation into both the circum-

stances around Lowe's death and into the hospitals operation. Facts thus far uncovered are:

- As early as three days preceding his death, Lowe demanded to be admitted to the prison hospital. He was finally admitted a day and a half before he died.
- The day he was admitted to the hospital, Saturday, January 4, 1975, Lowe's case was diagnosed as viral pneumonia.
- His medication at the time consisted of cold consules, throat Lozenges, cough syrup, aspirin and Epsom salt.
- Lowe was under the care of a medical training assistant (MTA) and didn't see Dr. Silverman, then the prison doctor, until minutes before his death.
- On the morning of his death, at about 5 a.m., Lowe's condition had deteriorated and he went into a state of collapse. His vital signs were erratic.
- At approximately 5:55 a.m. on the morning of his death, Lowe was preparing to be transferred to a local hospital in the Terre Haute community. These arrangmeents were made by L.K. Snowden, the MTA working on Lowe, after getting the clearance from Ralph J. Michaud, Hospital Administrator.
- At this time Snowden contacted D.P. Orr, Senior Lieutenant, about securing a prison guard to drive Lowe to the hospital in Terre Haute.
- At about 6:05 a.m. Snowden contacted Orr and told him he had just spoken to Dr. Silverman; that Silverman was en route to the prison; and that Silverman told Snowden to keep Lowe at the prison hospital.
- At that time, approximately 6:05 a.m., Snowden administered Lowe 50 milligrams of Demerol, a powerful synthetic narcotic drug.
- Less than twenty minutes after the shot was administered, Lowe expired.
- MTA's are allowed to prescribe medication and administer it if they are registered. The MTA's working here are not registered.

The other day the Surgeon General of the United States sent a representative here to look into the circumstances around Lowe's death. This information was suppressed from the prisoner population, but there are a couple of things which have surfaced since the investigation. For example, Michaud refused to turn over a slide containing blood

samples of Lowe taken a couple days before he died. Michaud claims they "destroyed" the sample. Also, Silverman has been "released" from his job as a result of the Surgeon General's investigation.

A number of questions have come to the fore since William Lowe died. Why was he refused admittance to the prison hospital when he demanded to be admitted? When Lowe's case was diagnosed as viral pneumonia, why wasn't he taken to a bonafide doctor? Why wasn't he taken to a hospital equip [sic] to handle his illness as soon as it was diagnosed? Why did Silverman stop Snowden from having Lowe moved to a community hospital? Was Silverman trying to cover up his own neglect and improper handling of the case? WHY WAS A MAN STRUGGLING TO STAY ALIVE ADMINISTERED A STRONG DEPRESSANT DRUG AT SUCH A CRUCIAL MOMENT?

Evidently the teachings of Watergate were learned well by all levels of government officials. Silverman getting fired and Michaud destroying evidence are unequivocally cover-up tactics we've seen used before. By now cover-up tactics have been used constantly by the hospital and warden here to "clean up" the facts around Lowe's death. Once again we're seeing lies becoming the "viable alternative" to the truth.

A viral flu epidemic continues to grow here, and prisoners are still not receiving proper medical attention. Prisoners who work at the prison factory must report to work no matter how sick they are; upon their arrival to work "arrangements" are made for them to go to the hospital at two and three in the afternoon—after they put in six or seven hours of hard work first.

Most people disregard the facts surrounding a death like Lowe's. They push it to the side saying he was a prisoner, a criminal, a person who broke the "law" and got what he deserved. They'll never examine the pressures created by the economy that drive people to commit crime; nor do you hear people refer to prisoners as human beings. They do not understand that prisons are warehouses for the poor—and that the only difference between prisoners and wealthy people who commit larger-scale crimes, is that the wealthy can afford attorneys to find loopholes to gain them their freedoms.

Corruption runs rampant within this prison. In recent years $16,000 worth of new welding equipment, 115 power

lawn-mowers, 300 baby pigs, 67 milk cows and 32 sides of cooked beef turned up "missing." In the case of the lawn-mowers, prison guards searched prisoners' cells and (3′ x 2′) lockers for the machines. Prisoners and administrators alike know that it's absurd to think that prisoners could have stolen such large quantities of the items mentioned. But investigations are never carried out, and everything is merely written off as "inmate pilferage."

A few weeks ago we called for a full-scale investigation into Lowe's death, the hospital facilities and the lock up and transfer of the then more than 70 prisoners locked in segregation from the strike. Again we are asking people to send letters of protest to the officials listed below. We are seeking all the facts around Lowe's death; indictments against any persons guilty of malpractice; the full upgrading of the hospital facilities; administrative approval of the Prisoners' Council; and the release of those men still locked in segregation. Also in respect to the men in segregation, we are calling for the reinstatement of the good time taken from them; stop any punitive transfers, extra years added on to their sentences or their having to stay in segregation for any protracted periods of time. All they did was participate in a peaceful act of solidarity to protest and expose a grave injustice; to protest and expose a sordid mess; to protest and expose a murder of a fellow human being who died by the hands of a negligent hospital staff.

WILLIAM LOWE MOVEMENT

Surgeon General of the United States
Office of the Surgeon General
Washington, D.C.

Norman Carlson, Director
United States Bureau of Prisons
H.O.L.C. Building
101 Indiana Avenue, NW
Washington, D.C.

Warden C. L. Benson
Box 33
Terre Haute, Indiana 47808

To your congress spokesperson

[Interview Notes of David Saxner]

David Orr. Norman Silverman. Larry Snowden. I'm not familiar with any blacklist of Michaud's. At this time I've not been able to obtain the Surgeon General's representative's name. However, if you don't find that out while you are here tomorrow, I will find it out by the end of the week. As I said in my preceding letter, I am not sure what's happening with those in seg. I did get a message from General that they were being kept from the legal room in "L" Unit. Write him. I don't know his register number, but Calvin Bass will suffice. I'll look into the blacklist thing further. Now the rest...

No Black person in any key hospital position.

Mr. X:

Mr. X walks around the population with a swell on his stomach that measures between 8 to 12 inches. Preceding his "treatment" in the prison hospital his stomach had no swells or knots of any kind. His story:

"In the first week of June 1974, I went into the prison hospital for a check-up. The check-up was given by a Dr. Freed, a doctor contracted from the St. Anthony's Hospital in Terre Haute. At that time Dr. Freed advised me that I had a hernia (in the right groin) that should be removed; he also told me I had an umbilical hernia. Dr. Freed assured me that the umbilical hernia was a minor operation, and that I should have that corrected when I was being operated on for the hernia in my groin. I was apprehensive about having anything done to the umbilical hernia, because I had lived with it—and had done heavy labor work in prison factories—since 1967. Dr. Freed eventually convinced me to have the double operation.

"On July 22, 1974, Dr. Freed performed the operations as scheduled. This was done in the prison hospital.

"The operation seemed to be successful. I had no complaints after the surgery, save some of the conditions in the recovery room (surgery ward). For example, there was a lot of people walking in and out of the recovery room, making noise and causing confusion; I was forced to eat the same unbalanced diet served to the main population; and too many

people handled the food. It wasn't a clean environment, let alone a place to recover from an operation. (I've also been told that sheets are not cleaned frequently for the hospital patients, and this results in patients lying on dirty, stained sheets that could fester wounds. D.S.)

"Three days after the operation, on July 25, 1974, I started vomiting and my stomach swelled up. I could no longer keep any foodstuffs or liquids in my stomach. My digestive track stopped functioning, and consequently I was unable to use my bowels. They pumped my stomach for the next four days, fed me intravenously and shortly thereafter my digestive track was working again. I was given chicken concentrate (one can for two weeks, and was told that's all I'd get) and koolaid for my diet.

"I was then released from the hospital.

"A week after I got out of the hospital my stomach got hard; it began to abscess and then, at 4 a.m. one morning in my dormitory, it burst open. I was left in the dorm until 10:30 a.m., at which time I was finally taken to the hospital and treated. The MTA (I can't recall his name) cleaned and dressed the wound, then gave me some antibiotics. I left the hospital and never returned. I tend to the wound myself, and I refuse to let the hospital treat me any more. The hospital and staff do not ask or offer to provide me with further treatment. I haven't seen any one from the medical staff here since October, and since I'm due to be released in the next couple weeks I don't intend to go to the hospital for anything."

John Mayberry:

"For the last six weeks I've been going to the hospital for treatment of a bronchial condition. On my first visit to the hospital, John Hines, MTA, diagnosed my bronchitis as hepatitis, and then sent me on to Dr. Silverman, then the prison hospital doctor. Dr. Silverman told me I had an asthmatic problem that was at [sic] cause for my bronchitis, although I am certain I don't have any asthma whatsoever. Dr. Silverman took an X-ray and prescribed me two pills, Tylenol (for fever) and Tetral (to open up the congestion).

"A few days later I returned to the hospital. This time Walter Martin, an MTA, gave me some antibiotics. When I returned to hospital after taking the antibiotics for a while, and told MTA Martin that the antibiotics were bothering my stomach, I was taken off medication completely.

"For the following month I got no medication whatsoever.

"Then yesterday, February 3, I went back to see MTA Martin. I told Martin that I had bronchitis and wanted to see a doctor. Martin wanted to know why I thought I had bronchitis, and I told him because that's what I had been told ever since I had been coming down to the hospital. When Martin refused to give me medication for my condition, I demanded to see a doctor. Martin told me I just couldn't walk in and ask to see a doctor. Martin further asserted that he couldn't send any one back to see the doctor unless he found something wrong with the patient. I finally threatened to tear the hospital apart if I didn't see a doctor or receive some medication. When MTA Martin saw I was serious, he prescribed penicilin, nose drops, cough syrup, throat lozenges, salt and gave me a two day lay-in from work. If it wasn't for the fact that I was running a temperature and threatened to rip the hospital apart, I would have left the hospital with no medication."

Everett Wallace, Jr.

"When I first came to this prison last year (from the Federal Prison Hospital in Springfield, Missouri) I was getting 400 milligrams of throzine [sic] a day. I went to see D. Silverman shortly after I arrived here. At that time I was seeing things and had been extremely paranoid that I was going to get stabbed (I was only 24 years old and had no business being in a penitentiary-class institution to begin with). Dr. Silverman increased my daily dosage of thorazine from 400 to 800 milligrams.

"Not too long ago I was placed in the hospital here for infectious hepatitis. After being there (in the hospital) for three days, I called the MTA (name unknown). I told the MTA I was feeling weak and I needed some kind of food other than the regular mess hall food. The MTA agreed with me the food was not too good, especially for a sick person to

get healthy, but he also told me there was nothing he could do. He did mention, however, that the hospital would be getting a dietician eventually (no such thing to this date —D.S.). After a short while I was released from the hospital.

"A week after I got out of the hospital I got sick out at work, and I told my factory boss, Mr. Wicks, to call the hospital for me and make an appointment. The hospital told Mr. Wicks not to bother sending me to the hospital; that 400 milligrams would be waiting for me at the next medication call (we have to wait at a line for medication, if we get any or want something like a cold capsule, three times a day—7 a.m., 12 noon and 6:30 p.m. If you don't have a prescription card specifying a certain type of medication you can only go to the 7 a.m. call. This means if you get a headache or some other minor pain that requires some type of pill at, say, 10 a.m., you would have to wait until 7 a.m. the next morning to get a pill—D.S.). I wasn't taking any medication at this time, and without looking at me the hospital diagnosed my case and prescribed me with 400 milligrams of thorazine!

"Four weeks ago I went to see MTA Martin two days in a row. He told me that I wasn't feeling ill, that it was all in my head. On the third day in a row that I went to see him and tell him that I was ill, he again told me there was nothing wrong with me. I requested that I be given a test for hepatitis. I was, and the test proved to be negative.

"That night I was feeling bad. I went back down to the hospital and MTA Bill Walters took my temperature. It was running a little bit above normal. Walters gave me two tylenols, which I took. I went back to my cell and started to break out in a sweat. I was getting to the point where I could hardly move. I knew I couldn't go back to the hospital that night, so I just applied towels to my forehead.

"At 6:30 the next morning I made my way to the hospital. On my way there I was stopped by a Lieutenant Marvin Marcadis, who wanted to know where I was going. He told me that he could see that I wasn't feeling well. But, at the same time, he told me I couldn't go to the hospital until 8 a.m. I told him I couldn't wait. As soon as I got into the hospital I started to vomit. Soon my temperature was taken,

and it read 102 degrees. John Hines, MTA, refused to allow me admittance to the hospital when I made such a request. I had to go back to my cell."

Mr. Y:

"I was coming out of the visiting room a couple weeks ago and was taken to the hospital because I was suspected of entering contraband into the institution. Upon entering the hospital I was told I was going to have an X-ray taken of my groin area. I started to resist and asked Lieutenant James Harbert, who brought me to the hospital, what my rights were. The lieutenant replied that I had no rights, that I had lost them when I came in the door. When I began to resist from having the X-ray taken, Harbert and his goon-squad, comprised of seven prison guards, wrestled me onto a table to be X-rayed. J.D. Copher, an MTA, gave me the X-ray (there are only two people in the joint licenced to work the X-ray machine, one is Michaud, and the other is a prisoner. None of the MTA's are licenced [sic] for using the machine. To find out what they can and can't do, you should find a doctor or med student. D.S.).

"After Copher finished with the X-ray he told Harbert he couldn't be sure that there was contraband hidden in my anus. Harbert then asked me if I'd submit to a finger-wave. I said no. Harbert took off his glasses, called the goon-squad forward, dove at me, and then he and the squad "put" me on a table and strapped me down. Copher gave me the finger-wave (I don't think he can put his hands inside a body, only a doctor can do this—I think. D.S.) there was also a forced enema given after the finger-wave. And then to top it off a Lieutenant Patrick Koehane came in and asked me to sign a piece of paper stating that I was given all my rights before I was given the finger-wave and the enema!"

* * * * *

That's all I've done so far, brother. I will continue to get more info by the time you come on Friday. I am really curious to see what happens tomorrow on the tour. If General gets transferred, here is his mother's address: Calvin Bass, % Beatrice Cooper, 479 Conner Street, Detroit, Mi. 48215. If I gave you that before, forgive me—I'm a bit spaced out now, which is why the second half of this is messy. Soon.

2/4/75

David Saxner #28759-117
Box 33
Terre Haute, Indiana 47808
January 9, 1974

Arpiar Saunders, Attorney
National Prison Project
1346 Connecticut Street, NW
Washington, D.C. 20036

Dear Arpy:

This will be brief and to the point. Enclosed is a quick press release I did yesterday—it will give you some insight to what's happening here. Also enclosed is an important memo I would like you to xerox and keep for us (if you don't mind). The memo, though not dated, may be invaluable in the future.

There is a slight distortion in the article. There were slightly over 900 prisoners involved in the work stoppage; and there are only 1071 prisoners inside the joint—the reference I made to the 1400 prisoners included the farm's population (which also receives its medical "treatment" inside the prison hospital).

Yesterday a brother passed out in the factory—he was working with a 103 degree temperature. People who work in the factory cannot go straight to the hospital when they're sick. They have to report to their respective jobs first, then their bosses "arrange" for them to see the doctor—but it just so happens that all factory appointments, no matter how sick a prisoner may be, are scheduled for 2 and 3 p.m.; after the person has put in a good six or seven hours as a slave!

Forty more prisoners have been locked-up since I wrote the article. What would be the chances of filing a class action suit to have them released? Are there any cases affording prisoners the right to peaceful protest? Denying the right? Judge Dillin has been very kind to prisoners around here lately. What do you think? I'd also like to hear your opinion about whether or not we should urge the dead brother's family to file charges against the prison.

Can you please see that Brigitte Cooke and Lanier get copies of the press release. Also, tell Brigitte to send a copy

to Arthur. I'm thinking if he came down here to speak to the media we could rally some needed local support.

Let me hear from you as soon as possible. And remember to send the addresses of any attorneys in the area who you think could be helpful. We want to open up this place—we've got the issues and motivation and support to do it now. Take care.

Moving slowly,
David

Date: May 13, 1973

To: U.S. Federal Bureau of Prisons
From: Prisoner's Peoples Union/Inmates of Terre Haute Prison
Subject: Prison Labor Union

Dear Gentlemen:

"We want the right to bargain over wages, working conditions and hours".

IDEALS AND PROPOSALS OF THE PRISONER LABOR UNION

The Prisoners' Labor Union is a check and balance that can be instituted to secure and insure that a penal system does not dehumanize, but instead induces rehabilitation.

Prisoners Labor Union Grievances

I) We have been and presently are being ECONOMICALLY EXPLOITED. We are forced to supply (slave) labor for the Federal Prison Industry: Food Service/ Laundry/ Maintenance Jobs—So called Vocational Training/ Electric Shop/ Plumbing Shop; And receive virtually no salary; we are coerced into this employment by threats of delayed release, confinement in segregation or denial of ordinary privileges. The Inmate workers feel that they are entitled to a minimum wage. If workers or prisoners work they should have a right to work and be fairly paid for that work.

2) The Inmates are under some of the worse working conditions possible.

3) Inmates do not have a choice where they will work nor as to what job they will be specifically assigned. The classification board in assigning jobs, show little regard for the inmates wish as to what they feel would benefit them in preparation for their re-entry into society. We feel that it is imperative that the inmate have a say in the matter as to the job he performs.

a) Enact a method to replace the present classification system to better serve the qualifications of the inmate laborer.

4) The inmate is not entitled to any kind of workman's compensation normally given to employees. We feel that we have the right to have these compensations.

a) ACCIDENT INSURANCE: to insure the inmate against serious injury.

b) LIFE INSURANCE: in case of an inmates death he would be able to provide some degree of economic independence for the family.

c) MEDICAL INSURANCE: would not only compensate the inmate but would leave his wife and family covered as well.

d) Retirement BENEFITS: a long-term inmate having worked for many years is entitled to these benefits as well as the inmate incapable of holding a job through either old age or injury.

5) The handicapped inmate is one of the most neglected and forgotten prisoners in the penal system. There are no significant programs available to them.

Structure for The Prisoners' Labor Union

1) Establish a median income (monthly, yearly, etc.) for each classification of all prison labor.

2) The eradication of racism in job placement of minority ethnic nationalities.

3) Support legislation which would stimulate outside interests for prison labor; that would create new job opportunities for the inmate labor force.

4) Establish & broaden a more relevant vocational training program so it will appeal to a larger segment of the inmate labor force.

5) Increase in salaries of correctional staff to create a higher caliber of correctional employee.

6) Establish workman's compensation for all Federal Employed Prisoners.

7) Develop rehabilitative programs for the handicapped inmate.

8) Gain our human rights and privileges and show that we, too are HUMAN BEINGS.

9) Improve dangerous working conditions.

10) Stimulate the interest of private industry in the penal system.

11) Combat all forms of cruelty and injustices within the system.

Basic Benefits to The Inmate

1) Financially, an inmate laborer, leaving an institution, would be better equipped to adjust to society and less likely to commit another crime. Today he has no immediate means of physical survival.

2) Unionization can create an atmosphere which would instill essential requirements to an individual's personal growth, such as

a) A more positive attitude toward work.

b) The incentive to learn and succeed.

c) A comprehensive approach to self-rehabilitation.

d) Sense of responsibility.

e) Enable the inmate to overcome the guilt feeling of having left his wife and family.

f) Would lead to the quality of inmate identifying with the world and society around him.

3) Prisoners would think more in positive terms, having less time to cause trouble (according to corrections administration).

4) The opportunity to retain the attorney of their own choosing.

5) Further productivity by giving them money enough to buy a hobby, either for personal achievement, enjoyment or the feeling of usefulness.

6) Money can be used for investments to aid family security for the present or after release.

7) 'Learn' skills directly beneficial to them upon release.

8) Insure their health with better working conditions.

9) Allow the prisoner to fulfill past financial obligation while in prison: home, automobile, etc.

FUTURE OBJECTIVES

1) Inmate-public seminars to act as a major force in removing the "convict" stereotype from the public mind and create access to media through TV, press and radio.

2) Develop a Prisoner Credit Union.

3) Seek investment opportunities for inmates.

4) Create job referral programs for parolees and ex-convicts.

5) Set up inmate cooperatives, operated by ex-convicts.

6) Establish a "Guest House" for visiting families who must travel long distances.

7) Establish visiting programs for those inmates who do not have families.

8) Transportation service for prisoners visitors to and from various central points.

9) Educational scholarship fund program.

10) Upgrade the medical treatment within the institutions.

11) Upgrade the food and commissary.

BUREAU OF PRISONS
WASHINGTON, D.C. 20537
POLICY STATEMENT 7300.2C
SUBJECT: PRISONER'S MAIL BOX
8-20-74

1. *PURPOSE*. This statement of policy is to update and revise the current procedures pertaining to the operation of the Prisoner's Mail Box.

2. *DIRECTIVES*. This Policy Statment supersedes Policy Statement 7300.2B, dated August 7, 1972.

3. *POLICY*. It is the policy of the Bureau of Prisons to provide all inmates in the Bureau institutions the opportunity to write government officials who are not immediately responsible for their care, custody, and correction. All letters mailed through the Prisoner's Mail Box procedures will be neither opened nor inspected. All inmates may utilize this process to write to officials specified below to discuss any problem or situation which they feel cannot be solved with the assistance of institutional personnel or by the use of normal mail channels.

Inmates may address letters through the Prisoner's Mail Box to: the President and the Vice-president; the Attorney General; Director, Bureau of Prisons; Regional Director; Office of General Counsel and Review, Bureau of Prisons; members of the United States Board of Parole; the Pardon Attorney; the Surgeon General, U.S. Public Health Service; the Secretary of the Army, Navy and Air Force; United States Courts; members of the U.S. Senate and House of Representatives; and representatives, specified by name or title, of the news media (as defined by Policy Statement 1200.1A).

State prisoners that are boarded in Bureau institutions will be permitted to utilize the Prisoner's Mail Box to correspond with state officials concerning their problems. Letters to Governors, Attorneys General, Director of Departments of Corrections and sentencing Judges will be forwarded in accordance with standard procedure outlined in this policy statement.

4. *OPERATIONAL PROCEDURES*

a.(1) *Description.* The Prisoner's Mail Box will be placed in a central location or locations readily accessible to the inmate population. Each mail box will be plainly marked and a statement of purpose will be posted indicating a list of persons to whom mail may be sent. The statement will indicate that matters which should be taken up with institution officials will normally be returned to the institution for disposition. The inmates' original letter will be returned with their response from Regional Office personnel.

(2) The notice placed on each mail box will also include the following statement:

> "The contents of all correspondence placed in this box are the responsibility of the individual writer. Any material which violates postal laws or regulations, i.e., is obscene or lewd or contains threat of bodily harm, involves extortion or libel, includes contraband, or is intended to facilitate escape from legal custody may result in prosecution in a Federal Court."

(3) The above statement will be translated into Spanish to assist the large number of Spanish speaking inmates in our care.

b. *Collection.* A designated institutional staff member will collect the contents of each Prisoner's Mail Box on a daily basis, Monday through Friday. All mail addressed to the Bureau and Regional Office will be forwarded each day in an envelope plainly marked "Prisoner's Mail Box."

c. *Identification of Mail.* Inmates will not be required to place their name or any identifying mark on the envelopes but will be requested to address all mail as legibly as possible.

d. *Letters to Central Office.* All mail addressed to members of the Central Office staff of the Bureau of Prisons will be forwarded with other Prisoner's Mail Box letters to the Regional Office, but only the Director's name is to be placed on the notice posted with the mail box.

e. *Letters to the U.S. Courts.* All mail addressed to the U.S. Courts shall be separated from other Prisoner's Mail Box letters and forwarded directly to the addressee, but

with the envelope stamped as directed in paragraph "h" of this policy statement.

Mail addressed to the U.S. Attorneys, U.S. Probation Officers and Clerks of the Court will be forwarded to the addressee, but the notice posted above the mail box will be limited to U.S. Courts.

Legal documents such as petitions for writs of habeas corpus, motions to vacate sentence, requests for trial records, etc., will be processed as Special Purpose correspondence as provided for in Policy Statement 7300.1A dated March 16, 1972. For handling incoming mail see par. 6b, Policy Statement 7300.1A.

f. *Letters to Members of Congress.* All mail addressed to members of Congress will be separated from other Prisoner's Mail Box letters and be forwarded directly to the addressee but with the envelope stamped as directed in paragraph "h" of this policy statement. Letters to members of Congress will be sent to their Washington address and each institution will insure that a current Congressional Directory is available for ready reference by all inmates. Letters addressed to persons that you are unable to identify as members of Congress or letters which pose other unusual problems, will be forwarded to the Bureau for disposition. All inmates will be instructed that multiple letters to several members of Congress are likely to be less effective than will one letter to the Congressman of his choice. Follow-up letters are normally unnecessary and should not be written in less than one month. Letters to members of Congress may be sent as "Special Purpose" mail if the inmate so desires. For handling incoming mail see par. 6b, Policy Statement 7300.1A.

g. *Registered Letters.* Inmates will be allowed to send letters through Prisoner's Mail Box procedures as registered, certified or special delivery if they so desire and at their own expense. In order to do so they must identify themselves by name and register number so the proper procedure for handling mail of this type can be followed. Of course the letters may be mailed only to individuals authorized on the notice of the Prisoner Mail Box. The letter will still remain sealed and will be processed in accordance with each institution's proce-

dures for the handling of registered mail. The handling of Commissary Form #24s will be consistent with the procedures outlined in Policy Statement 15263.

h. *Transmittal Stamp.* Each institution will have a stamp made includes the following statement: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information and clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address."

This revised procedure will eliminate the stapling of the old transmittal slip to the inmate's envelope and eliminate the cost and time factor of readdressing another envelope. This message is to be stamped directly on the back side of the inmate's original envelope.

It is imperative that this message be stamped in a clear and legible manner on each envelope. An example of this stamp is shown on attachment 1.

5. *ACTION REQUIRED.* The procedures outlined above become effective immediately. Institution policy statements referring to Prisoner's Mail Box should be amended in accordance with these procedures and a copy sent to the Regional Director.

/S/ Norman A. Carlson
Director, Bureau of Prisons
Commissioner, Federal Prison Industries, Inc.

EXAMPLE OF TRANSMITTAL STAMP ON BACK SIDE OF ENVELOPE

P.O. BOX 500
STEILACOOM, WASHINGTON 98388

DATE _____

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.

Supreme Court of the United States

No. 84-732

THEODORE CLEAVINGER, MARVIN MARCADIS, AND TOM P. LOCKETT, PETITIONERS,

v.

DAVID SAXNER AND ALFRED CAIN, JR.

ORDER ALLOWING CERTIORARI. Filed *February 19, 1985.*

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Seventh Circuit* is granted.

Justice Powell took no part in the consideration or decision of this petition.